Land Access Issue Group

FINAL REPORT

The Whitehorse Mining Initiative

NOVEMBER 1994

102-06494/

TABLE OF CONTENTS

Foreword		iii
Preface		v
Chapter 1:	**Introduction**	1
Chapter 2:	**Land Access and Mining**	4
1.	Background	4
2.	Principles	7
3.	Objectives	8
4.	Recommendations	8
Chapter 3:	**Aboriginal Land Claims and Interim Measures**	9
1.	Background	9
2.	Principles	11
3.	Objectives	11
4.	Recommendations	11
Chapter 4:	**Completion of Canada's Protected Areas Networks**	13
1.	Background	13
2.	Principles	16
3.	Objectives	17
4.	Recommendations	17

Chapter 5: Land-Use Planning and Decision-Making Processes 19

1. Background 19

2. Principles 25

3. Objectives 26

4. Recommendations 26

Appendices

Appendix 1: List of Participants

Appendix 2: Land Area Information for Canada

Appendix 3: Mineral Development Decision Sequence and Glossary

Appendix 4: Examples of Memoranda of Understanding and Interim Agreements

Appendix 5: Tri-Council Statement of Commitment to Complete Canada's Network of Protected Areas

Appendix 6: Canadian Wilderness Charter

Appendix 7: A Methodology for Achieving Representation of Canada's Natural Regions

Appendix 8: Canada's Natural Regions

Appendix 9: World Conservation Union (IUCN) Protected Area Categories of Protected Areas

Appendix10: Generic Land-Use Planning and Decision-Making Model

In September 1992, at the 49th Annual Mines Ministers Conference in Whitehorse, Yukon, the Mining Association of Canada (MAC), on behalf of its member companies, as well as provincial and territorial mining associations/chambers, presented a brief reviewing the serious challenges facing the minerals and metals industry in Canada.

Recognizing the need for the mining industry "to earn the trust of Canadians and to prove that it can operate in an environmentally sensitive and sustainable fashion", the MAC proposed the launch of a multi-stakeholder process to develop a common vision and strategic plan that would take the metals and minerals sector into the next century.

The proposal was endorsed by the Mines Ministers, and on March 30, 1993, the Whitehorse Mining Initiative (WMI) was launched at the annual Prospectors and Developers Association of Canada Convention. Other stakeholders who had been identified and who had agreed to participate include: federal, provincial and territorial governments; business, including the banking community; Aboriginal groups; environmentalists; and labour. The immediate objective was to design a consultative process to address key issues affecting both the industry and the other stakeholders.

The objective of the WMI is to move toward a socially, economically and environmentally sustainable and prosperous mining industry, underpinned by political and community consensus.

The WMI is spearheaded by a Leadership Council composed of government ministers and senior executives and officials from each of the sectors. The Leadership Council is coordinated and supported by a Working Group, also composed of representatives from each of the participating sectors, although at the senior working level. Third, four Issue Groups were formed to address the four main issue areas identified as being important to the mining industry. Finally, a Secretariat was created to play an overall coordinating and support role for all of these bodies. In part, the Secretariat is responsible for supporting and coordinating the issue groups and assisting them in the preparation of their final reports.

The four Issue Groups were created to address the following topics:

- land access
- environmental management and regulations
- finance and taxation
- workplace/workforce/community.

The Land Access Issue Group (LAIG) held its first meeting in August 1993. At that meeting, the Issue Group included representatives from the mining industry, the governments of Canada, Ontario, British Columbia, Nova Scotia, and Newfoundland, Aboriginal groups, and the environmental sector. At its second meeting, the Issue Group added representatives from the government of Quebec and the labour sector. A complete list of all participants may be found in Appendix 1.

The LAIG began its work by identifying those issues that were considered to be of particular relevance to its assigned topic: land access. The objective was to discuss each of these issues and to identify common ground.

Through a series of six meetings and several teleconferences during 1993-94, the Issue Group succeeded in identifying and grouping these key issues, and in reaching agreement on the means to resolve some of the problems and conflicts that prevented the stakeholders from achieving their goals with respect to Canada's land use mosaic.

In reaching a consensus, the LAIG did so on the basis of the entire document. It is a package of interrelated principles, objectives and recommendations. Each section must therefore be considered in light of the overall balance of the entire report.

While tremendous progress was made in achieving the consensus described, it can only represent part of the work that needs to be accomplished before all concerns are addressed to the satisfaction of the many land access stakeholders in Canada. Land access issues, and land use planning and decision-making generally, are complex and will continue to evolve. In addition to the recommendations for action found in this Report, the LAIG therefore believes that the process of consultation and discussion must continue.

The WMI is a national exercise. The Issue Group, however, is aware of and has drawn upon a number of regional, provincial and territorial exercises related to land-use planning, integrated resource management and Aboriginal land-claims settlements.

The LAIG is only one of four Issue Groups working within the direction provided by the WMI Working Group and Leadership Council. The LAIG recognizes that its discussions, and the kinds of land uses which might be permitted under various land use designations, are closely related to discussions on environmental regulation, the workforce and workplace, and finance and taxation considerations. Consistent with the theme of interdependence contained in this report, the LAIG hopes that all of the WMI recommendations can be integrated so that the work of each issue group is enhanced.

PREFACE

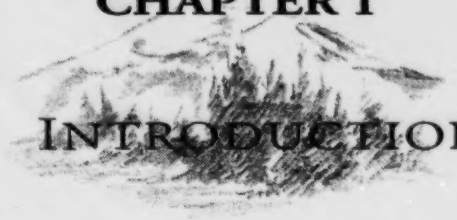
In their discussions, the LAIG participants were not speaking on behalf of their respective organizations or expressing official policy, nor were they committing their respective organizations institutions or sectors to the contents of this report or any particular course of action. Rather, the discussions represented the efforts by these individuals to develop their ideas and bridge the gaps that exist between and among the various stakeholders.

This document is the product of those discussions. It represents the consensus views of the **members** of the LAIG (see membership list in Appendix 1), including the principles, objectives and recommendations that the Issue Group put before the WMI Leadership Council for its consideration in its efforts to translate this consensus into action. The appendices are meant only to provide background information; as such, they are not formally part of the contents of the Report.

The consensus reached by the Issue Group members is limited to the contents of this Report. It should not be interpreted as signifying agreement on any or all of the other three Issue Group reports, nor should it be interpreted as acceptance of the contents of the WMI Leadership Council Accord, or any documents related to that Accord.

Finally, it is recognized and understood by all LAIG participants that nothing in this Report shall in any way prejudice Aboriginal or treaty rights, the land claims process or self-government negotiations, nor should it be interpreted by anyone as doing so.

CHAPTER 1



INTRODUCTION

Most land and resource users in Canada are required to meet their needs in a climate of escalating demands on a finite land base, finding themselves faced by land-use decision-making processes which are increasingly complex, time-consuming and uncertain in their outcomes. At the same time, these land and resource users see clear, timely and well-reasoned decisions on land-use designations to be more and more important for a variety of reasons.

The range of interests that contribute to, and are affected by, land-use decisions represent many divergent points of view and often includes potential for conflict. In addition to mining, these interests can include: agriculture; wildlife management; recreation and tourism; urbanization; the forest industry; transportation; telecommunications; hydro-electric and other energy resource development; national and provincial parks and other protected area designations; and Aboriginal interests, rights and concerns, to name but a few of the more obvious examples.

At the writing of this report, the total percentage of lands in Canada that are closed, temporarily or permanently, to mineral exploration and development, is 6.5 per cent. Of these lands, protected areas account for 4.9 per cent (See Appendix 2).

Clearly, these percentages are going to grow, given that each of Canada's 13 senior governments is publicly committed to completing its own network of protected areas. Completion, which will entail representing each of Canada's natural regions and protecting its critical wildlife habitat, will likely result in protected status for **at least** 12 per cent of Canada. Some jurisdictions have specifically included the 12-per-cent target in their protected area goals.[1] In addition to the protected areas commitments,

[1] The guideline of setting aside a certain percentage (originally estimated to be 10 per cent) of a nation's land mass in protected areas was first suggested in 1982 at the Third World Congress on National Parks. The percentage (this time estimated to be 12 per cent) target was picked up in the 1987 Brundtland Report in this statement: "A consensus of professional opinion suggests that the total expanse of protected areas (four million km^2 or four per cent of the Earth's surface) needs to be at least tripled if it is to constitute a representative sample of the Earth's ecosystems." (pp. 165-66.)

The 12-per-cent guideline was echoed in the World Wildlife Fund's Endangered Spaces Campaign in 1989, in the federal government's Green Plan in 1990, and in the unanimous resolution of the House of Commons in 1991.

It should be noted, however, that in most instances, the percentage is not, in itself, the goal, but rather, the result of achieving the goal. The goal is the completion of the networks of protected areas that are representative of Canada's natural regions and that protect Canada's critical wildlife habitat.

there are likely to be pressures to close or restrict access as a result of other environmental initiatives, such as biodiversity commitments, heritage programs, and buffer zones and corridors.

In addition to the 4.9 per cent, a further 1.5-2.0 per cent of land is either permanently or temporarily closed to mineral exploration and development activities across the country. This land is closed for a variety of reasons. Land types and sizes of these areas will vary from one jurisdiction to another. Some of the larger types of closure in some jurisdictions include Aboriginal land claims, hydro-electric power development and transmission corridors, National Defence lands, urban development, roads and railways. These land uses will also continue to grow, exerting increasing pressure among competing land users and affecting land availability.

Approximately 66 per cent of the 1.5-2.0 per cent is in Aboriginal land claims, entitlements or settlements. While these lands are not necessarily closed permanently or in a formal sense, the slow progress being made in settling land claims and the uncertainty surrounding their eventual settlement discourage the industry from committing its exploration capital without knowing whether development will be allowed.

This will be offset, in part, through the resolution of outstanding Aboriginal land claims and the possibility that these Aboriginal communities will open their territories to mineral exploration and development.

Not all stakeholders will have an interest in every land-use decision, but it is rare today for a decision maker not to be faced with competing interests, which requires an evaluation of costs and benefits. Too often, stakeholders are faced with an adversarial process, and each stakeholder may find itself trying to question and undermine the legitimacy of its competitors. Sometimes a stakeholder is prevented from having full access to a decision-making process, leading to complaints of lack of transparency and political interference. The lack of satisfaction with the quality of the processes hinders wide-spread acceptance of the decisions by the full range of stakeholders, and competition for influence with the decision makers is pursued through a variety of alternative channels.

In this context, the Whitehorse Mining Initiative (WMI) Land Access Issue Group (LAIG) is an attempt by the mining industry and other stakeholders to develop a basis for a more cooperative and constructive approach to land-use planning and decision making. Aside from the industry, governments, and the labour movement within the mining industry, two other sectors with a direct stake in resolving land-use issues were invited to participate. These two sectors are Aboriginal peoples and environmental organizations.

Although they are not the only sectors with a stake in land-use issues, Aboriginal peoples and the environment community are perceived by the mining industry as potentially having a greater impact on the industry's

access to land. This view is shaped by the fact that there are two national initiatives under way in Canada that will have a considerable and permanent impact on land-use designation — the settlement of Aboriginal land claims and the completion of Canada's protected area networks.

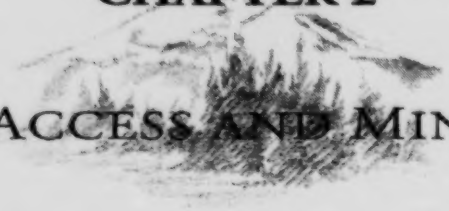
Both of these initiatives are driven by government policy. In fact, all 13 senior governments have endorsed the completion of Canada land-based protected areas networks by the year 2000 and are in various stages of identifying candidate sites for protection and creating new protected areas. This will be discussed more extensively in Chapter 4.

These two initiatives, and the sector interests associated with them, have consequently been considered in some detail by the LAIG with a reference to their relationship with mining interests. Through lengthy discussions, the Group has reached consensus on a set of principles, objectives and recommendations with respect to support for: access to land for mining; the settlement of Aboriginal land claims and considerations for the joint management of resource development on such lands; and the completion of the protected area networks. These principles, objectives and recommendations are contained in Chapters 2-4 of this report.

The stakeholders participating in the WMI process recognize that their land and resource needs cannot be considered in isolation from other interests. The principle of sustainable development requires the integration of interests so as to reflect the interdependence of the environment and the economy. In light of this context, the LAIG members have expressed a common interest in developing the principles of a land-use planning and decision-making framework that satisfy each other's requirements *and* a common interest in resolving land-use conflicts in a more productive manner.

The weaknesses found in some of the current land-use planning and decision-making processes in Canada, and the resulting uncertainty, are central concerns for all of the WMI LAIG participants. The LAIG has described the fundamental characteristics of an integrated land-use planning and decision-making process in Chapter 5. Issues which concern the mining industry in particular are also identified and addressed.

CHAPTER 2



LAND ACCESS AND MINING

1. BACKGROUND

Access to land for exploration and development, and certainty of tenure for deposits which are found, are key components of the continued well being of Canada's mining industry[2] as it exists today. Historically, it is through wide-spread access to Canada's land mass that the mining industry has been able to find ore bodies and to develop those ore bodies into mines.

Unlike, for example, forest resources, which are easily detected and inventoried, most mineral resources are hidden and difficult to find. As a result, the process of discovery is financially risky, expensive, and is usually the result of extensive exploration efforts that are carried out over long periods of time, often involving years or even decades of effort. A discovery is the product of an iterative process, often including many cycles of exploration to find a prospect, to turn a prospect into a discovery, and a discovery into a mine. An explorer will typically examine many promising areas and stake many mineral claims before discovering an ore body which is economically viable. Even then, it may be many years before it is developed into a mine, if ever. Exploration activities contribute significantly to the provincial and territorial economies. While exploration may encompass large tracts of land initially, ultimately a mine operation will only occupy a very small area of land, typically not measuring more than 5-20 km^2.

Controversy over land access has, however, arisen due, in part, to concerns about cumulative impacts of mineral exploration and development activities. For example, potential for negative impacts on adjacent land users and wildlife from roads and unreclaimed sites are an ongoing source of conflict and opposition to land access for mining and exploration in environmentally sensitive areas. The potential downstream impacts and infrastructure that supports a mine site may extend beyond the 5-20 km^2 to which reference was made above.

Concerns over allowing access to land for exploration which might eventually result in mining are, in part, the legacy of past practices, mistakes or incomplete technical understanding of potential impacts. In many cases, the mining industry has taken significant steps forward to ensure that it explores and mines in an environmentally responsible fashion. This process continues in all facets of the industry, from exploration through to reclamation. It is being accomplished through better technology, new technical practices and better management. The concerns and input of workers, the community and governments are increasingly being taken into account.

---

[2] In the context of this report, the mining industry includes metallic and non-metallic hard-rock mining, placer mining, industrial minerals (including sand, gravel and aggregates), as well as the mining of coal and tar sands.

While the mining industry, its associations and governments are continually communicating with Canadians about the industry, better communications programs alone may not be sufficient. The mining industry, in cooperation with governments and other stakeholders, could consider the establishment of a model mine program to demonstrate in a tangible way that the mining industry is taking steps to be responsive and environmentally responsible. Elements of such a program might entail documenting or determining best practices at all stages of the industry, enhancing community and stakeholder involvement, or establishing sound business relationships with Aboriginal peoples. Another facet might be to use specific operations to demonstrate how mining industry activities and environmental goals can co-exist within a specific geographic area with environmental sensitivities.

The accompanying chart (see Appendix 3) displays the typical stages of a mineral exploration and development project. At each stage, the explorer and its financial backers must decide whether to invest further funds in an exploration project. The completion of each successive exploration stage reveals more information about the mineral potential of the area in question. Sometimes the information is positive, inducing the explorer to continue to the next stage of exploration; usually, the information is negative, leading to abandonment of the area or the particular target under examination. The decision to continue or abandon the exploration project is based on an assessment of the costs of the next stage and the probability of eventual success; that is, discovering and developing a "mineable" deposit.

The costs of the advanced exploration stages on a given target are typically much greater than the costs of primary exploration activities. The closer the explorer comes to a production decision, the more expensive the next step. At each stage, there is a risk that the expenditure may only prove that the deposit is uneconomic. Uncertainty is reduced at each stage, but not always in the desired direction.

The explorer is induced to incur the costs and risks of exploration by the hope of eventually discovering an economically viable deposit and the expectation of being able to develop a mine. To provide incentive to incur these costs, mining legislation in Canada provides that the successful explorer can acquire the mineral tenure so as to have the exclusive right to exploit the deposit, subject to regulatory approvals. To achieve regulatory approval and to respond to growing concerns about the potential impact of mining operations on the environment, many operators fund and conduct extensive scientific and technical research regarding the physical and chemical characteristics of the deposit and the site conditions.

Mineral tenure is critical to the mining industry, and there is consensus that governments should have clearly communicated policies on issuing and cancelling mineral tenure. There are, however, differing views on the exact nature of mineral tenure. One view is that a clear title or property

right arises upon the staking of mineral claims. Another view is that mineral rights are not property rights. Regardless of either view, minerals are a public resource and entitlement to use them is an evolving matter of public policy.

In the view of the mining industry, mineral tenure is an essential element in the legal and regulatory system governing mineral exploration and development. Historically, all jurisdictions in Canada have been regarded as having systems of secure mineral tenure which have given explorers clear "title" to deposits found, and a concomitant right to proceed to the mining stage if all regulatory requirements are met.

This has been a positive factor in the assessment of Canada's investment climate by the international community. From these rights has flowed a perception of legal certainty in the investment community, resulting in the commitment of financial resources. If that certainty is missing, the perception of "sovereign or political risk" increases dramatically and will affect the choice of jurisdiction in which mineral exploration will occur.

In recent years, the nature of "mineral rights" and "mineral tenure" has been questioned. Some lawyers consider "mineral tenure" to be a "property right", while others consider "mineral tenure" to be in the nature of a contract or a licence. This latter view holds that rights to public resources are contractual in nature and are received subject to limitations that are inconsistent with traditional views of property rights.

The LAIG did not have the time or legal resources to consider this issue in depth. It did come to the conclusion, however, that it is necessary for jurisdictions to have clear policies on issuing and cancelling mineral tenure. Such policies also need to be clearly communicated.

In the case that a mineral tenure is cancelled, the issue of compensation may arise. There is debate over whether compensation should be paid and, if so, how the amount should be determined. The mining industry thinks that compensation must be paid in a timely fashion based on technical and economic estimates of foregone market value. Others think that compensation should be paid on the basis of costs incurred. Still others think that no compensation may be due. The LAIG was in no position to consider this issue in detail. However, notwithstanding this difference of views on mechanism, the LAIG agrees that jurisdictions must have a clearly established and communicated compensation policy for cancelled mineral tenure.

Access to the land base and the processes of land-use designation are important to the economics of exploration and mining industry in two ways.

First, mineral deposits are found in a wide range of geological settings. The ability to predict the location of individual mineral deposits is quite limited. In general, therefore, reducing the amount of land available for exploration results in lost opportunity for the industry.

Second, the nature of decision-making processes for land-use designation can have a major impact on mineral tenure. Consequently, these processes can affect the willingness of people to continue mineral exploration in a particular jurisdiction.

The foregoing leads to three basic observations.

First, the early establishment of the boundaries of land areas and the associated management regimes which are to exclude or restrict mineral exploration and mining will reduce uncertainty and the risk which accompanies uncertainty.

Second, to the extent possible, selecting areas to be withdrawn in such a way as to fully consider the value of potentially mineral-rich lands will minimize the foregone opportunities and the economic costs associated with withdrawal.

Third, security of mineral tenure and related compensation issues are important factors in assessing economic and environmental costs and benefits of any development project. Clear policies and laws are critical to avoiding unnecessary loss of public resources and private investment. The key is to provide certainty and clarity surrounding the rules and regulations regarding mineral tenure.

2. PRINCIPLES

1. Canada's mining industry is an important contributor to this country's social and economic well being. To continue to play this role, it must have fair and reasonable access to land to explore for, and develop, the mineral reserves necessary to meet what a sustainable society requires.

2. All stakeholders have a legitimate and important role to play in the debate and decisions being taken across the country in matters affecting land use and land access.

3. Given that certainty of mineral tenure is critical to mineral investment, and recognizing the need for governments to retain some latitude for public policy purposes, all jurisdictions must have clear policies and practices on issuing and cancelling mineral tenure.

4. The resolution of land-use conflicts must integrate social, economic and environmental goals, objectives, and commitments. The environmentally sensitive development of Canada's mineral endowment is a key element of ecologically and socially responsible economic development.

3. OBJECTIVES

1. As a legitimate land user, the mining industry must have access to policy and decision-making processes which recognize the industry's economic benefits and which consider the industry's requirements for, and impacts on, land.

2. To develop consultative mechanisms through which the mining industry and other stakeholders can address and resolve contentious issues on an ongoing basis, both in the context of specific operations or proposals and for broader, policy-oriented matters.

3. To promote certainty with respect to mineral tenure by providing clear mineral tenure policies and practices.

4. To demonstrate to Canadians that the mining industry can operate in an environmentally responsible fashion.

4. RECOMMENDATIONS

1. The mining industry should actively participate in land-use planning and decision making.

2. The mining industry should continue to improve its efforts to explore and mine in an environmentally responsible fashion: by continuing to improve its record on environmental compliance; through environmental codes of practice relating to exploration, development, operations, reclamation and closure, management and communications practices, and procurement.

3. The mining industry, together with governments and other stakeholders, should investigate the feasibility of a "model mine program" in the context of integrated resource management to demonstrate to Canadians that the mining industry is taking steps to be progressive, responsive and responsible.

4. Stakeholders should create permanent mechanisms at the national and regional levels to develop and maintain a dialogue on issues of ongoing mutual concern.

5. All governments should have and communicate clear policies on the issuance and cancellation of mineral tenure, including compensation.

CHAPTER 3

ABORIGINAL LAND CLAIMS AND INTERIM MEASURES

1. BACKGROUND

Settlement of Aboriginal land claims is important, not only because of governments' fiduciary duty to Aboriginal peoples or because of the positive impact that it will have on Canada's Aboriginal people, but also because it is expected to eliminate or reduce a significant source of uncertainty at a time when many concurrent land-use planning activities are contributing to increased uncertainty. In addition, some Aboriginal communities[3] have an interest in mineral developments in their areas because of the economic benefits they bring, particularly as a source of revenue, training, jobs, and business opportunities, which will be essential for viable Aboriginal communities, both before and after settlement of land claims.

Settlement of land claims is providing Aboriginal communities with authority over lands and resources. With that authority comes the right of the community to decide whether to develop or not to develop its mineral resources. That has not always been the case, historically. In most cases, in the past, mineral development has proceeded without the consent or involvement of the Aboriginal community. There are still other instances where, although the community did consent to development, it derived none of the benefits.

Pending the settlement of land claims, mechanisms such as Memoranda of Understanding (MOUs; known as Interim Agreements in Ontario) and Interim Agreements (IAs; known as Resource Development Agreements (RDAs) in Ontario) are beginning to be used to guide development on Aboriginal land. (See Appendix 4 for examples.)

Memoranda of Understanding between Aboriginal and non-Aboriginal governments are being developed as a basis for defining how mineral and other economic development will take place on Aboriginal land before, during, and after land-claims settlements.

Sometimes, Interim Agreements (RDAs in Ontario) between Aboriginal governments and mining companies are also being developed pending land claim settlement. The IAs cover such areas as employment and training, contracting opportunities, environmental protection and monitoring. They may also deal with issues such as flexible work schedules to accommodate traditional activities and subsistence hunting/fishing, as well as any

---

[3] The term "community" is used to refer to Bands, Band Councils, designated Aboriginal organizations, as well as local or regional Aboriginal communities and their corporations.

other items which are deemed relevant between the company and the community. Similar arrangements can also be used in situations where claims are not being negotiated.

Both the MOUs and IAs are legally binding documents which are being developed "without prejudice" to Aboriginal rights and treaty negotiations. To the extent that their terms do not contradict the land claim settlement, those terms have been incorporated into the land claim settlement agreement and, in the areas they cover, could provide the initial operating framework for mineral development activities following land claim settlement. Because of these characteristics, these agreements contribute substantially to increased certainty with regard to mineral exploration and development on lands subject to land claims negotiations. In some cases, these agreements have led to commercial activities.

Although many parties may have an interest in the outcome of land claims negotiations, the nature of the process — government-to-government negotiations — means that only three parties can sit at the negotiating table: the federal government; the provincial/territorial government or governments; and the Aboriginal community that filed the claim. All other parties are deemed to be represented by one or more of these three parties.

Trying a new approach, British Columbia has created a Treaty Negotiations Advisory Committee (TNAC) in addition to the existing forum for negotiating land claims. It includes non-government parties with an interest in the outcome. This Committee can advise the federal and provincial governments on the interests involved.

The LAIG recognizes that certain comprehensive land claims have been settled and that any recommendations developed in the WMI process should not prejudice these existing agreements. These include, for example, the Inuvialuit Final Agreement, the Nunavut Agreement, and other agreements. The mining industry should develop a clear understanding of the obligations and land access procedures found in these agreements. Provisions in land claims settlements and ancillary legislation will establish new boards and agencies with a role in determining the terms and conditions for land access or to arbitrate disputes. Close attention needs to be given to their design and function to minimize the possibility of overlap, duplication and complexity which could affect land access or increase uncertainty.

The LAIG recognizes that by respecting the Aboriginal community mineral access policies created by these agreements, communications and relations will improve among industry, governments and the communities. Where there is interest in pursuing mineral-related opportunities, there may be benefits in a mutual education process. The mining industry needs to understand Aboriginal requirements for opportunities and safeguarding traditional economic activities. At the same time, Aboriginal communities need to understand the mining industry's needs for rules and processes which are conducive to attracting investment.

Indian reserves may also have potential for mineral development. Currently resource development on reserves is governed by the federal *Indian Act*. It appears that the framework for resource development on reserves found in the *Indian Act* is in need of substantial reform.

2. PRINCIPLES

1. Governments have a duty and a responsibility to fairly and expeditiously settle land claims.

2. The development and maintenance of communications between the mining industry and Aboriginal people is an important feature of land claim settlement processes and post-settlement activities.

3. Where mineral development is wanted by an Aboriginal community, rules and processes for resource development must be timely, consistent, dependable, and must minimize complexity.

4. Third-party rights relating to lands and resources subject to land claim negotiations are an important factor to be recognized and referenced in land claim agreements.

3. OBJECTIVES

1. To settle land claims as fairly and expeditiously as possible.

2. To establish simple and effective regulatory regimes governing land use and environmental management where required.

3. To develop interim business agreements between mining companies and affected Aboriginal communities where both parties are interested in pursuing mineral development.

4. RECOMMENDATIONS

1. Federal, provincial and territorial governments should facilitate the expeditious and efficient settlement of land claims by ensuring that the structure for negotiations is well defined, clearly understood, and provides an opportunity for third-party advice.

2. Governments should improve and make accessible in a usable format all non-confidential information on Aboriginal land claims, including which communities are involved, which areas are claimed and the status of the claim process. This information should be made available, in a mapped format, to all stakeholders, either as part of the NATLUS[4] database or as a stand-alone database. The information should make clear the nature of the claim; it should draw a distinction between surface and sub-surface rights with respect to the claim in question; and it should provide contacts within the Aboriginal community for parties who require more information.

3. Governments should assist those Aboriginal communities not currently involved in comprehensive land claim negotiations, and who would like to pursue resource development opportunities, to enable them to pursue interim business agreements with mining companies. This support would include helping to assess factors such as economic and human resource development needs.

4. Land access provisions contained in settled Aboriginal land claims agreements should be clearly communicated by all parties to the agreement to industry, and industry should develop a clear understanding of those provisions. Moreover, the mining industry and Aboriginal communities should work together to make each other aware of respective requirements, especially in the design and operation of regulatory regimes affecting land access and mineral development. Ways to facilitate such a discussion should be explored as early in the process as possible.

5. Boards and agencies which are established to regulate or arbitrate land access pursuant to land claims settlements should operate in a manner which is timely, consistent and simple.

---

[4] The National Industry Land Use System (NATLUS) was initiated in 1989 as a joint project between the Mining Industry Land Use Committee (MILUC) and the federal Department of Natural Resources. This digital database for land area information was made available to both governments and the industry. It is designed to operate on the Integrated Resource Management Information system (IRMIS), a desktop computer mapping system, as well as other GIS that may be used by government departments.

CHAPTER 4

COMPLETION OF CANADA'S PROTECTED AREAS NETWORKS

1. BACKGROUND

Protected areas serve many functions globally and domestically. In concert with responsible development activity throughout the country, protected areas networks are recognized as contributing substantially to environmental health, biological diversity and ecological processes. As a fundamental part of a sustainable balance of economy and environment, protected areas hold scientific, educational, recreational, economic and inspirational values for current and future generations.

As with mineral development, the issue of certainty is central to achieving the goals of protected areas initiatives. Long-term protection that is legislated or formalized in other ways by governments, is critical for the maintenance of representative areas within each ecosystem and critical wildlife habitat.

The mining industry, environmental groups, and other stakeholders endorse the completion of the protected areas networks, as agreed to in the *Tri-Council Statement of Commitment* (see the discussion below and Appendix 5).

There is, however, a shared concern about the continuing uncertainty surrounding the completion of these networks.

The mining industry is concerned, in part, because it is not clear what areas will be withdrawn or restricted, nor is it clear how large those areas will be or how adjacent areas will be managed. Second, the longer it takes for protected area candidate sites to be identified and publicized, and for the final selection to be completed, the longer the uncertainty will inhibit the industry's ability to plan its exploration and development activities. Third, the industry is concerned that decisions on protected areas are sometimes being made without complete information being available regarding the mineral resource potential of the area in question. Many of the areas considered for protected areas have been subject to little or no government geological mapping or industry mineral exploration. This factor, in combination with the limitations of geological deposit models, makes it extremely difficult, if not impossible, to identify areas of high mineral potential. Better information could help decision makers to select protected areas that achieve the goals of the protected areas networks, while minimizing the impact on the mining industry to find and develop economic mineral deposits.

All Aboriginal groups are concerned that there be full consultation in the process used to complete Canada's protected areas networks.

Environmental groups are concerned about similar process-related issues, such as the slow progress of governments in getting candidate areas on the table and in establishing the protected areas. Environmental groups are also concerned about: the loss of potential candidate areas to development; compromises on protected area boundaries to accommodate other interests; provincial governments changing their protected area policies to allow resource development in some protected areas; and the impact on protected areas of incompatible resource development on adjacent lands.

The urgent need for the protection of representative natural regions is reflected in the *Tri-Council Statement of Commitment to Complete Canada's Networks of Protected Areas*, endorsed by the federal, provincial and territorial Ministers of Environment, Ministers of Parks, and Ministers of Wildlife, in Aylmer, Quebec, in November 1992. The *Tri-Council Statement of Commitment* was also endorsed by Canada's Forest Ministers and representatives of the four national Aboriginal organizations. The five commitments are:

- Complete Canada's networks of protected areas representative of Canada's land-based natural regions by the year 2000 and accelerate the protection of areas representative of Canada's marine natural regions.

- Accelerate the identification and protection of Canada's critical wildlife habitat.

- Adopt frameworks, strategies, and time frames for the completion of the protected areas networks.

- Continue to cooperate in the protection of ecosystems, landscapes and wildlife habitat.

- Ensure that protected areas are integral components of all sustainable development strategies.

One impetus for the *Tri-Council Statement of Commitment* was the **Canadian Wilderness Charter** (see Appendix 6) which led to the launch by the World Wildlife Fund of the Endangered Spaces campaign. The goal of the Endangered Spaces campaign is to achieve the representation of each of Canada's natural regions within a defined protected areas network. As of the end of 1993, 32 of these 422 natural regions were fully represented, 52 were moderately represented, 112 were partially represented, and 226 had little or no representation at all (see Appendix 8). In total, the percentage of Canada that is set aside as protected areas, where mining is prohibited, is 4.9 per cent.[5]

---

[5] The statistics in this paragraph are taken from the *Endangered Spaces Progress Report, 1993, No. 4*, published by the World Wildlife Fund, except for the figure of 4.9 per cent, which is explained in Appendix 2.

There is a range of protected areas, from those that are most stringently protected to those that are less so. However, the heart of a protected areas network lies in lands free from industrial development and managed to maintain the natural ecological integrity in perpetuity. In addition, lands adjacent to protected areas also play an important role as buffer zones or management areas, where exploration and mining, among other land uses, may be regulated more intensively.

In establishing the protected areas networks, the rationale, scientific criteria and traditional ecological knowledge are critical in defining explicit and defensible selection criteria. Criteria and methods for achieving representation that are based on scientific research have been developed. One such method is discussed in Appendix 7.

The early identification of candidate protected areas should provide the mining industry with a greater degree of certainty with respect to access to mineral bodies. To help reduce potential land-use conflicts, governments are therefore encouraged to identify **and make public** their candidate sites as soon as possible. These sites should be carefully tailored to meet the need for representativeness without withdrawing land from other land uses where it is not necessary. Working with relevant stakeholders, those governments that have not already done so should release the criteria that will be used to select and review preliminary lists of candidate areas from which a final list of candidate areas will be drawn.

To guide their actions to complete a network of protected areas, most jurisdictions have developed a map of natural regions. The goal is to protect an area that represents the range of elements found in that natural region. However, because of a lack of inter-jurisdictional cooperation in drawing the natural regions, there is little coordination across political boundaries. Hence, it is possible that the same natural features will be represented twice within the protected area networks on both sides of a political boundary. The LAIG therefore urges all governments to coordinate their efforts across political boundaries to avoid unnecessary duplication of efforts and the removal of more land than is required for conservation purposes.

Another issue related to the establishment of protected areas is the provision of interim protection/management measures for candidate sites in use in some jurisdictions in Canada.

From the perspective of the environmental sector, interim protection/management measures are an important means of ensuring the preservation of the value of candidate sites as protected areas during the evaluation and selection process. These measures will normally require closure of candidate sites, or the restriction of access to them, for industrial purposes, during the period of evaluation and selection. As part of these measures, recognition should also be given to the concern of potential or existing industrial or commercial users that such closures or restrictions

not be in effect for any longer than is necessary. Overall, the process of nomination and selection of protected areas ought to be speedy. In addition, special measures could be devised, such as shorter time-lines (fast tracking) for candidate sites where industry indicates that it has a special interest in a candidate site.

The mining industry is also concerned about the use of interim protection/management measures for candidate protected areas sites. These concerns include: the nature of the protection; the length of time involved; the size and extent of the areas involved; the criteria used to select such sites; treatment of the existing third-party rights and interests; and the signals sent to investors, especially if the areas involved are extensive.

Finally, better understanding would also be promoted by having and effectively communicating common standards and terminology across jurisdictions. One such set of standards and terminology that may assist in promoting understanding is the standard classification system adopted by the International Union for the Conservation of Nature (IUCN) (see Appendix 9). While Canada's different jurisdictions may follow the content of those standards, the use of different terminology can confuse prospective land users.

2. PRINCIPLES

1. The WMI LAIG endorses the five commitments in the November 1992 *Tri-Council Statement of Commitment to Complete Canada's Networks of Protected Areas*, which calls on governments to:

- Complete Canada's networks of protected areas representative of Canada's land-based natural regions by the year 2000 and accelerate the protection of areas representative of Canada's marine natural regions.

- Accelerate the identification and protection of Canada's critical wildlife habitat.

- Adopt frameworks, strategies, and time frames for the completion of the protected areas networks.

- Continue to cooperate in the protection of ecosystems, landscapes and wildlife habitat.

- Ensure that protected areas are integral components of all sustainable development strategies.

2. It is important for governments to complete an early identification of all candidate protected areas and then, in part, to avoid potential land-use conflicts, to initiate full consultation with all stakeholders during the final selection phase of the selection process.

3. Governments should create and set aside from industrial development by the year 2000 those protected areas required to achieve representation of Canada's land-based natural regions.[6] Elsewhere, protected areas may be open for development as long as this development is compatible with the objectives of the protected area and consistent with relevant management policies and legislation in that particular jurisdiction.

4. Aboriginal communities must be involved in the selection and management of protected areas. These communities should have access to protected areas for traditional, ceremonial, cultural, subsistence and social practices. Aboriginal communities should benefit from economic opportunities related to the development and operation of protected areas consistent with management plans for those areas.

3. OBJECTIVES

1. That for all jurisdictions, the rationale and criteria for the identification and selection of the networks of protected areas, as set out in the *Tri-Council Statement of Commitment,* are defined and candidate sites made public as soon as possible.

2. That the selection of sites be coordinated among jurisdictions so as to achieve representation while avoiding duplication wherever and to the extent possible.

4. RECOMMENDATIONS

1. Governments should enhance efforts to ensure that all parties with an interest in land use, including Aboriginal communities, environmental groups, labour and the mining industry, have equal access to, and can participate meaningfully in, all stages of the completion of Canada's protected area networks (e.g. determining protected area criteria and management regimes; candidate site selection; evaluation of candidates, etc.).

2. Governments should coordinate and integrate, to the extent possible, their processes for the selection of sites for protected areas so that natural regions are adequately represented without being duplicated across jurisdictions.

3. For all jurisdictions, the criteria and process for the identification and selection of protected areas should be defined and the candidate sites made public as soon as possible.

4. Mineral information inventories should be conducted and evaluated prior to the final selection of a protected area.

---

[6] Industrial development includes: mining, logging, oil and gas, and hydro-electric development.

5. All stakeholders should work to understand and disseminate information regarding the criteria and process for the identification and selection of protected areas.

6. Governments should consider what interim protection management measures for protected area candidate sites, if any, would be appropriate, to ensure that these sites are not compromised by development.

7. Where governments are using or considering using interim protection/management measures such as full closure or restricted access for candidate protected areas sites, they should first carefully determine the need for and likely impact of such measures on all affected stakeholders, as well as the local, regional or national economy. Consideration must also be given to when these measures should be applied and their duration. Any interim protection/management measure should only be applied following full consultation with all affected stakeholders.

CHAPTER 5

LAND USE PLANNING[7] AND DECISION-MAKING PROCESSES

1. BACKGROUND

Decisions over the distribution of land or resources are often made in an atmosphere of competing interests vigorously presenting conflicting points of view. The issues which invariably must be addressed include: the valuation of the land and various natural resources; the way in which they are used; who should use them; who pays for and benefits from their development; and, what management strategies are important.

Land-use decision making has often been adversarial and the decision-making structure hierarchical, with the affected parties frequently seeking a more "accountable" approach. This approach to resolving land-use conflicts has resulted in the perception, if not the reality, that there are winners and losers, and that favourable land-use decisions are reached through lobbying decision makers or winning over public opinion. This reality is further complicated by complex administrative channels, land-use policies and legislation that are based on inadequate information and data.

The increasingly complex relationships among our environmental, economic and social needs require an integrated land-use and decision-making process that effectively and efficiently addresses a much wider range of interests and rights. As a result, multi-party negotiations, based on identifying and achieving each party's objectives, are becoming a widely used process for making land-use decisions.

Decision-making structures may range from legislated powers of a Minister or Cabinet, through various forms of delegated powers, advisory bodies, shared or *ad hoc* decision-making processes. Regardless of the approach taken, the principles which affect how a decision is reached should remain consistent. A distinction should be made between the application of decision-making processes at different levels. While a generic land-use decision-making structure should serve to guide the process of policy development, there should be enough flexibility to accommodate the attributes of specific undertakings at the site level.

---

[7] Land-use planning is broadly defined as the process of making considered decisions about how people should use (or leave unused) some part of the earth's surface, having regard to known and expected circumstances and to given aims and/or criteria. This definition has been adapted from Nigel Richardson, *Land Use Planning and Sustainable Development in Canada*, Canadian Environmental Advisory Council, 1989.

The availability and quality of information is also becoming more important as the demand for access to land rises among the many competing interests. This need for information ranges from technical and scientific information about the impact of various land uses to the cumulative impact of land-use decisions on the various users and on the environment. There is also a strong need for a mechanism simply to generate and maintain comprehensive inventories of the various types of land-use designations.

Exploration and mining are a significant part of Canada's land-use mosaic and are thus affected by the various decision-making systems that determine land use. While mineral interests are in some respects affected in the same way as other resource interests, it is possible to identify specific problems for the mining industry which are directly related to the decision-making process:

1. INFORMATION

Most land-use planning in Canada is concerned primarily with the visible land base: the length and breadth of the surface. Often it does not account for the hidden "third dimension" of the land base, that is, the underlying geology, hydrology, energy, mineral and ground water resource potential. In general practice, land-use decisions are made without the benefit of suitable geological resource information. In some cases, this has led to increased risks to public safety and the environment, land-use conflict, investment loss, and costs to infrastructure and natural capital. In addition, decisions have led to the preclusion of future mineral resource development, either by the designation of permanent surface land use and zoning or by restricted access and *de facto* closures to land with resource development potential. Hence, this third dimension needs to be considered and analyzed by land use decision makers and factored into all land-use planning and decision-making processes in Canada. This includes the issue of accessing land with undeveloped mineral resources and the impact of land-use decisions on areas adjacent to existing mines.

Similarly, the full inclusion of environmental information, including rare and endangered species habitats, parks and candidate protected areas, will also be necessary to improve the effectiveness of integrated resource planning and decision making, and to reduce conflicts between preservation and development interests.

2. THE CUMULATIVE IMPACT OF LAND-USE DECISIONS

The complexity of Canada's land use mosaic with its numerous and varied designations affecting the availability of land makes it difficult for stakeholders to track and assess the cumulative impact(s) of land-use plans and decisions. To the extent that such vehicles exist

(e.g. NATLUS), they would assist stakeholders with an improved understanding of land access and resource allocation issues and help governments in making more informed land and resource policy decisions.

3. MINERAL RESOURCE INFORMATION AND ASSESSMENTS

Prudent land-use decision making requires a thorough knowledge and consideration of the mineral resource potential of the land. It is extremely difficult, however, to predict mineral potential due to such factors as the uncertainties of what mineral commodities will be of value in the future and where they might be found. As a result, there are strongly differing viewpoints on our ability to provide meaningful information on future mineral potential to land-use planning processes.

The methodologies for estimating mineral potential have been evolving for more than three decades in response to a variety of needs for information on future mineral development capabilities. Today's methodologies begin with a strong geo-scientific foundation of existing knowledge from mineral information inventories (MII) to define areas of known high mineral value. The elements of this foundation are then interpreted using mineral deposit models, and knowledge of what constitutes economic mineral deposits, to provide an indication of both discovered and undiscovered resource potential. Such mineral resource assessments (MRA) are essentially a "snapshot in time". As new data become available, as new concepts are developed, as new uses and extractive technologies are devised, and as the local and world economies change, so too will the resource potential. The difficulties of making accurate mineral resource assessments, coupled with a lack of appreciation of those difficulties by stakeholders, including decision makers, gives rise to differing viewpoints on the value of conducting mineral resource assessments. The differences are strongly held because, where land areas have been closed to exploration and mining, there is usually no opportunity to revisit land-use decisions in the light of new information that could change the mineral potential rating.

The reality, however, is that Canada's land-use mosaic is in a significant period of change, with strong pressures to restrict or preclude mineral exploration and mining in certain areas for a number of reasons. In these land-use decisions, mineral values must be accounted for, with the best information and techniques available, in order to minimize foregone benefits of mineral development. What constitutes the "best information" to provide to planning processes and decision makers is a hotly debated issue.

Many geologists in the mining industry point out that neither government nor industry can effectively predict where mineral deposits will be found or their ultimate value. These geologists are concerned that there is no evidence that using extrapolated MRA information leads

to better land-use decisions, largely because of the inherent weaknesses in the approach and in decision makers' lack of appreciation of those weaknesses. MRA data, in the viewpoint of these geologists, masks some of the real difficulties in making informed decisions because the final MRA product is not based on uniform mineral information. Understanding this principle is paramount and they believe that decision makers are not all aware of it. Therefore, many industry representatives will not endorse the current technology and methodology of MRAs until decision makers demonstrate to the broadest segment of industry that there is a fundamental understanding of the technical hurdles involved in MRAs. Without this understanding, the representatives will not accept that "good" land-use decisions are being made.

Industry representatives believe that MII data on known mineral occurrences and deposits, without significant extrapolations of mineral potential, should be used for land-use planning purposes. The nature of such inventories is such that they can only be used to avoid land-use conflicts where alternative sites are available to accommodate competing land-uses.

An opposing view is held by government geologists and planners who are responding to the requirements of multi-stakeholder planning processes. They are of the strong opinion that MII data, while having a high degree of accuracy, is far too limited in extent to provide meaningful information across the large tracts of land subject to planning. Experience has shown that mineral values will not be considered at all if left only to MII data. Geological surveys around the world, including many in Canada, are undertaking MRAs to provide input to strategic land-use planning and policy making. New research efforts, which incorporate expert industry input, are being pursued to enhance the certainty and scientific basis underlying MRA. Supporters of MRA argue that land-use planning processes are informed of the limitations of the methodology and develop recommendations with this understanding. When these land-use recommendations are forwarded to government decision makers, the limitations are again identified. In the end, decisions affecting land-use are going to be made and this group believes that better decisions are being made with MRA data and can point to examples of these decisions.

Clearly, this debate is far from resolved. The LAIG recognizes the shortcomings of the current MRA processes, but it also acknowledges the need for high-quality mineral data to be part of land-use decision making so that the respective costs and benefits can be identified and evaluated by decision makers. The LAIG supports the concept that the limitations inherent in any resource information should be clearly articulated and should be fully recognized by decision makers alongside the resource data itself. The LAIG also suggests that further investigation into improving MRAs is warranted and should be considered a priority. Governments, industry and the academic and research communities should cooperate and provide the opportunity for research that will improve strategies and, therefore, levels of confidence in assessing

mineral resource potential. Land-use decision making systems also should be refined to take into account the nature of geo-scientific knowledge, the accumulated experience of geologists involved in MRAs, and evolving mining technologies.

4. DUE PROCESS

Mining projects typically take many years from exploration to commencement of production, and the mines themselves may continue to produce for many decades. When coupled with the low probability of any particular exploration effort being successful, it is clear that the mining industry requires certainty of mineral tenure over discoveries. This underlines the need for a consistent land-use decision making process which is fair, open, reasoned and effective, and which is allowed to run its course.

There are also problems which exist generally, going beyond the specific concerns of the mining industry:

1. PARTICIPATION

All stakeholders are faced with constraints in participating in land-use planning and decision making processes. There are two aspects to the issue: the ability to participate, defined as having the resources, skills and time to play an effective role in processes, and the opportunity to participate, defined as having access to the process and the decision makers for the purposes of providing meaningful input into the decision making process.

Regarding the first aspect, with respect to some processes, there is a concern regarding "consultation overload" as governments shift towards more participatory decision making processes. Stakeholders should be able to participate without stretching their financial resources beyond their means. In some cases, funding may need to be available to allow for meaningful participation.

As to the second aspect, some regulatory and decision making processes do not always provide adequate opportunity for stakeholders to participate and provide meaningful input.

In the first case, it appears that regulators, in their desire to open up their processes, sometimes confuse the "quantity" of input with the "quality" of input. In the second case, lack of access prevents stakeholders from expressing legitimate needs and concerns. What is really needed is a balance. Stakeholders need the necessary access to ensure that meaningful input can be provided, without being overburdened to the point where resources can no longer meet the demand for input. This scenario requires careful and sensitive design of the mechanisms for stakeholder participation to preserve that balance.

2. CREATIVE SOLUTIONS

As land-use pressures increase because of competing interests and rising demands on the available land base, the need for creative solutions will also increase. Interest-based negotiations which seek to maximize the resolution of competing interests may be very useful. Any solution must find a balance between providing predictability of outcome and retaining flexibility. Retaining flexibility refers to the possibility of amending previously decided matters should land ownership, economic and/or environmental conditions change. Any review of a decision to determine whether an amendment is necessary should only take place if all stakeholders agree that it is warranted.

3. EVOLVING APPROACHES (ECOSYSTEM-BASED PLANNING)[8]

Some jurisdictions are moving to ecosystem-based planning. This approach to land-use planning attempts to sustain the health, vitality and integrity of the ecosystem, while planning for the community's long-term interests, its economy and the environment that supports it. The ecosystem concept provides many alternatives to traditional ways of doing things and, most importantly, recognizes that "everything is connected to everything else." An ecosystem approach to land-use planning should: provide means for evaluating the natural, physical, social, cultural, and economic components of ecosystems, and the relationships among them; focus on understanding the interactions among air, land, water, and living organisms, including humans; assess the cumulative effects of human activities on ecosystems and their resilience to change and stress; emphasize the dynamic nature of ecosystems; recognize the importance of living species other than humans, and of future generations; and to work to restore and maintain the integrity, quality and health of the ecosystem.

An important distinction to traditional land-use planning is that decisions in ecosystem-based planning are not based on political or administrative boundaries, but rather on environmental units, such as watersheds or other natural regions that will cross administrative lines.

---

[8] Although ecosystem-based planning is a concept that has been around for approximately 30 years, the definition is still evolving. What is offered above has been drawn in part from a discussion paper entitled *Toward an Ecosystem Approach to Land-Use Planning* by S. Barrett and K. Davies, in PLANNING FOR SUSTAINABILITY: TOWARDS INTEGRATING ENVIRONMENTAL PLANNING INTO LAND-USE PLANNING, prepared for the Royal Commission on the Future of the Toronto Waterfront, 1991.

4. CERTAINTY AND LASTING DECISIONS

All stakeholders are looking for certainty in land-use designations. Therefore, we require well thought-out and long-lasting decisions. Certainty is needed to ensure that ecological integrity is being protected in the long run, and to provide the confidence to the mining industry, among other development interests, that investments in mineral exploration and mining are safe investments from a land-use viewpoint. Land-use planning should establish which lands are to remain available for responsible resource development and which lands are not. Proposals for mining-related activities can then proceed in the confidence that questions pertaining to the acceptability of mining as a land-use have been addressed. All stakeholders in the planning processes will also have the confidence that such proposals are still subject to an environmental review or assessment according to the regulations of that jurisdiction.

2. PRINCIPLES

The LAIG recognizes that land-use planning and decision making is largely a provincial matter and that most, if not all, of Canada's jurisdictions already have in place land-use decision making processes. This is also true for some Aboriginal territory where land claims have been settled. For the most part, these processes adequately address the issues which must be resolved. In setting out the following principles and recommendations, it is not the objective of the LAIG to create yet another variant of some of the more successful models that exist. Rather, the LAIG is putting forward key principles that comprise the "best" possible process, and making some general suggestions for ways in which these many existing processes may be able to improve their effectiveness and efficiency while minimizing conflict over the way in which decisions are made.

1. A central purpose of land-use planning is to ensure ecological and socio-economic integrity in each of Canada's natural regions.

2. An important product of land-use planning is to provide certainty to all stakeholders as to which lands are available for responsible resource development and which lands are not.

3. Land-use planning in Canada is an effective tool for achieving sustainable development by its application to promoting the efficient use of land and resources; protecting lands, resources and features of special value; resolving competing demands for land and resources according to predetermined criteria; and encouraging and facilitating environmentally sound economic development.

4. Effective and efficient decisions about land-use are reached through the application of a fair, open, reasoned, effective, timely and consistent decision making process which is accessible to all those who are legitimately affected by it (see Appendix 10 for the listed attributes for these basic characteristics).

5. Land-use decisions should be based on information that is timely, consistent, of the best possible quality, and as complete as possible. This information should be understandable across jurisdictions.

3. OBJECTIVES

1. To ensure that all land-use stakeholders have equal access to an effective and fair land-use decision making process which takes into account all relevant values and interests in the determination of land use.

2. To ensure that decision makers have access to understandable, timely, high quality, relevant and unbiased information on which to base decisions.

3. To ensure that land-use decisions provide as much certainty as possible for all stakeholders.

4. RECOMMENDATIONS

1. Decision makers should create mechanisms which enable all stakeholders to participate fully, efficiently, effectively, and equitably in land-use decision making processes.

2. All levels of governments should move toward the integration of land-use, environmental and resource planning and decision making, and ensure that they address ecological and socio-economic issues.

3. Federal, provincial/territorial and Aboriginal governments and the minerals industry should work together to ensure that better mineral resource information is more readily available and understandable to land-use decision makers. To this end, mineral resource data should be developed and incorporated into land/resource GIS databases.

4. Decision makers should be made aware of the quality of information available to them and, ideally, be sensitized to the nuances of the technical aspects of information on which decisions will be made. All limitations in the information or methodology should be pointed out to the decision maker.

5. A complete Mineral Information Inventory should be done prior to any land-use decision. Where Mineral Resource Assessments are conducted for government use in land-use planning, they should pay particular attention to Recommendation No. 4 above. Any mineral data should be

compiled by experts and the results communicated in an understandable manner to land-use decision makers. The results should be used in considering alternative siting, varying degrees of protection, and interim management measures to optimize the objectives of all interests.

6. All parties, and especially decision makers, who have had meaningful input in a land-use decision making process should commit to the implementation and enforcement of the decisions and regulatory controls identified through that process.

7. Governments, industry and the academic and research communities should work together to provide the opportunity for research to improve strategies and levels of confidence in assessing mineral resource potential, and in land-use decision making systems that provide the latitude necessary for the dynamic nature of geo-scientific knowledge, related technologies and the accumulation of experience.

8. Where candidate protected areas are proposed or other land-use designations that affect mineral activities, the nature and timing of any constraints imposed on mineral-based activity should be made clear as early on in the decision making process as possible.

APPENDICES

Appendix 1

List of Participants

WHITEHORSE MINING INITIATIVE
Land Access Issue Group
Members

Facilitator

Norman P. MacLeod
Facilitator
Envirotech
Tel: (604) 474-0323
Fax: (604) 474-0333

Provincial/Territorial

David Hopper
Land Use Planner
Department of Natural Resources
Province of Nova Scotia

Heather Robertson
Land Use Planner
Mineral Sector Analysis Branch
Mines and Minerals Division
Ministry of Northern Development and Mines
Province of Ontario

Benoit Nadeau
Chargée Projet
Ministère de l'Énergie et des Ressources
Gouvernement du Québec

Paul L. Dean
Assistant Deputy Minister
Mineral Resource Management Branch
Department of Mines and Energy
Province of Newfoundland and Labrador

Graeme McLaren
Manager
Land Use Policy
Land Management & Policy Branch
Ministry of Energy, Mines & Petroleum Resources
Province of British Columbia

Federal

Peter Hale
Senior Policy Adviser
Resource Management Division
Mineral Policy Sector
Department of Energy, Mines & Resources
Government of Canada

Colleen Snipper
Director
Protected Areas Group
Environment Canada
Government of Canada

Aboriginals

Jerry Asp
Consultant

Darliea Dorey
Vice-President
Native Council of Canada

Paul Quassa
Nunaeut Beneficiary

Mike Paulette
Vice-President
Métis Nation

Industry

Bruce McKnight
Vice-President
Corporate Affairs
Westmin Resources Limited

Roger Wallis
Vice-President
Exploration
Billiton Metals Canada Inc.

Dennis Prince
Director
Exploration Services
Falconbridge Limited

Robert Keyes
Vice-President
Economics
The Mining Association of Canada

Michael Bourassa
Partner
Aird & Berlis

W.J. Wolfe
General Manager
Canadian Exploration
Cominco Limited

Labour

Bert Pereboom
Senior Program Officer
Business Branch
Research Department
United Steelworkers of America

Environment

Kevin McNamee
Director, Wildlands Program
Canadian Nature Federation

Howard Epstein
Board Member
Ecology Action Centre

Norma Wilson
Volunteer
Canadian Parks and Wilderness Society

Alan Young
Canadian Environmental Network

WMI Secretariat

Lois Hooge
Head
Whitehorse Mining Initiative Secretariat

Torsten Strom
Group Coordinator
Whitehorse Mining Initiative Secretariat

Other Participants

Tony Andrews
Managing Director
Prospectors and Developers Association of Canada

Phil Fraser
Former Vice-President
Native Council of Canada

Edmond Gus
Consultant
Assembly of First Nations

Tom Hoefer
General Manager
NWT Chamber of Mines

Jim Johnston
Department of Canadian Heritage
Government of Canada

David Luff
Executive Director
Department of Energy
Government of Alberta

Hans Matthews
President
Canadian Aboriginal Minerals Association

George Miller
President
Mining Association of Canada

Process Support

Daniel Johnston
Partner
Sutherland-Johnston-MacLean Barristers & Solicitors

Torsten Strom
Issue Group Coordinator
WMI Secretariat

Lois Hooge
Head
WMI Secretariat

Wendy Wesley
Secretarial support
WMI Secretariat

Resource People

Frank Wilson
Co-ordinator
Planning System Review Project
Ministry of Natural Resources
Government of Ontario

Dana Richardson
Director
Municipal Planning Policy Branch
Ministry of Municipal Affairs and
Planning
Government of Ontario

Wayne Wagner
Mineral Strategy Branch
Mining Sector
Department of Natural Resources
Government of Canada

Jim Johnston
Department of Canadian Heritage
Government of Canada

Lyn Anglin
Geological Survey of Canada
Department of Natural Resources
Government of Canada

Charles Jones
Resource Management Geologist
Department of Energy and Mines
Government of Manitoba

Appendix 2

Land Area Information for Canada

The land area statistics contained in this Appendix have been supplied by the provincial and territorial jurisdictions at the request of the WMI Land Access Issue Group. The request was sent to all jurisdictions through members of the Intergovernmental Working Group on the Mineral Industry (IGWG).

Jurisdictions were asked to supply their respective land area information based on the following generic groupings:

A1 – Protected Areas:	Lands off limits to exploration and mining for protected areas purposes.
A2 – Other Closed Areas:	Lands off limits to exploration and mining for other purposes.
B – Restricted Access:	Lands where mining industry access is restricted or conditional. These restrictions can range from severe to minor.

It should be noted that while these groupings are closed or restricted to mining, they may also apply to other forms of development. This is especially so for the Restricted Access grouping.

The aforementioned generic breakdown was used because all jurisdictions have different, complex and discrete land area descriptions that may have similar or different applications to mineral exploration and mining. For example, one jurisdiction may collect statistics for land areas under **town/city land**, which is identified as closed to mining. Another jurisdiction, however, may collect land area statistics for **municipal land** that includes cities, towns and rural areas, all of which may be restricted but **not** closed to mining. Hydro-electric development lands in one jurisdiction may be closed to mining, while in another jurisdiction there may be minimal, if any, restrictions on land access for mineral exploration or mining.

The primary purpose of this statistical information is to illustrate the complexity of how land is used and closed or restricted in the context of mining across the country.

Some jurisdictions have also identified new land categories that have been developed but are not yet identified or evaluated. These categories were included as examples of new initiatives that may further restrict the land base available for exploration and mining. This illustrates that land access is and, indeed, will continue to be a complex issue, not just for mineral exploration and mining, but for a number of sectors who have differing needs and objectives on a finite land base.

The reader should take special note that land area statistics in the provincial and territorial jurisdictions are collected for multi-purposes and generally not by a single agency. Consequently, there may be individual land area categories that overlap with others within single jurisdiction. This is particularly the case under Column B: Restricted

Access. On the other hand, the individual land area categories under Columns A1 and A2 are separate entities and do not overlap with the others within the "A" grouping.

The reader should also note that the total of the three columns will not represent the total land area of each jurisdiction. Within each jurisdiction, there are lands on which mineral exploration and mining may take place without restrictions over and above normal operating requirements.

It is for this reason of overlap that individual land area categories have not been totalled under Column B. **The reader is cautioned against totalling Column B in order to develop percentages or draw relative comparisons within the column, with other column groupings or between jurisdictions. Any such relative comparisons will be inaccurate and overestimated.** The reader is advised to consult with the individual jurisdictions for explanations of each land area category.

Caution: **Upon cursory review, the Issue Group has identified several apparent inconsistencies with other sources of information, and within the table from one jurisdiction to another. For example, the land areas shown for national parks do not always agree with the figures and statistics of Parks Canada. Also, migratory bird sanctuaries, which are shown as restricted in Prince Edward Island and Quebec, are shown as closed to mineral activities in both Alberta and Saskatchewan, despite the fact that the federal legislation governing these features does not prohibit mineral activities.**

Due to time constraints, the Issue Group was unable to verify all of the entries in the table. Nevertheless, the Group has chosen to include the table because it represents the only compilation of its kind for Canada and served as a basis for our statistics in this Report. Its shortcomings serve to illustrate the lack of consistent, fully reliable information on the topic, and suggests the need for cooperative efforts to provide such information.

Land Area Information for Canada

Province/Territory	CLASS		
	Lands Closed	to mineral activities	
	A1 Protected Areas	A2 Other Closed Lands	B Restricted Access
Alberta			
National Parks	5,406,000		
Wilderness Areas	560,700		
Provincial Parks	141,600		
Natural Areas	109,700		
Ecological Reserves	31,400		
Migratory Bird Sanctuaries	14,500		
Land Use Zones - Integrated Resource Plans	925,800		
Urban/Rural Settlements		205,200	
Hydro Reservoirs		17,100	
National Defence Lands		849,300	
Caribou Ranges			6,742,400
Land Use Zones - Integrated Resource Plans			1,653,100
Metis Settlements			505,300
Model Forests			
Land Use Zones - Integrated Resource Plans			
Land Claims			
TOTAL	7,189,700	1,071,600	
British Columbia			
National Parks	630,200		
Provincial Parks	5,592,000		
Ecological Reserves	108,000		
Regional Parks	13,500		
No Staking Mineral Reserves		50,000	
National Defence Lands		57,200	
Hydro Reservoir (Williston)		175,000	
Community Watersheds (Vancouver, Victoria, Nanaimo)		100,000	
Agricultural Land Reserves			4,700,000
Private Land (not including private land in ALR)			2,866,000
Indian Reserves			350,000
Urban/Rural Settlements			295,160
Conditional Staking Reserves			500,000
Hydro Reservoirs			190,000
Community Watersheds			1,400,000
Special Management Zones			46,500
Other Federal Lands			31,579
Crown Land under Land Act Tenure (prior surface rights)			379,606
Transportation			227,600

Land Area Information for Canada

Province/Territory	CLASS		
	Lands Closed	to mineral activities	
	A1 Protected Areas	A2 Other Closed Lands	B: Restricted Access
PAS Study Areas			
Recreation Areas			
Forest Wilderness Areas			
Wildlife Management Areas			
For Other Reasons			
TOTAL	6,343,700	382,200	
Manitoba			
National Parks	306,606		
Ecological Reserves	57,442		
Shoal Lake Watershed		14,571	
Roads		320,000	
Provincial Parks			1,653,903
Wildlife Management Area			3,080,987
Provincial Forest Area			2,179,373
Private Lands			9,749,000
Indian Reserves			240,380
Native Hold Area			2,993,369
Resource Management Areas			4,800,000
Proposed Churchill National Park			
TOTAL	364,048	334,571	
New Brunswick			
National Parks	40,000		
Provincial Parks	36,000		
Proposed West Iles Marine Nat'l Park	6,000		
CFB Gagetown		111,000	
Other DND Lands, airports, Agr. Stn		22,500	
Acadia Forest Experimental Station		9,000	
Mining Act Reserves			
Belledune Smelter		1,500	
Lorneville Industrial Park		3,000	
NB-PEI Fixed Link		6,000	
Watersheds			247,500
Agricultural Land			150,000
Indian Reserves			24,000
TOTAL	82,000	153,000	

Land Area Information for Canada

Description of Land by Province/Territory	CLASS		
	Lands Closed	to mineral activities	
	A1 Protected Areas	A2 Other Closed Lands	B: Restricted Access
Newfoundland/Labrador			
National Parks	243,900		
Wilderness, Ecological and Provincial Reserves	406,700		
Provincial Parks	42,683		
Hydro Reservoirs & Special Development Areas		367,055	
Regulated Lands			
National Defence Lands			34,700
Municipal Planning Areas including Protected water supply areas			700,419
Agricultural Development Areas			335,262
Wildlife Reserves			61,900
Crown Land Reserves including development area, protected area & restricted area			137,007
Private Land			1,785,200
Timber Rights			1,937,000
Potential Wilderness Areas & Parks			
Torngat			
Lac Joseph			
Mealey Mountain			
Serpentine Lake/Lewis Hills			
Other			
Undesignated			
TOTAL	693,283	367,055	
Northwest Territories			
Wood Buffalo National Park	945,000		
Auyuittug National Park Reserve	2,147,100		
Nahanni National Park Reserve	476,500		
Ellesmere National Park Reserve	3,952,000		
Withdrawal East Arm National Park	740,700		
Withdrawal N. Baffin National Park	2,220,000		
Thelon Game Sanctuary	5,516,700		
Polar Bear Pass National Wildlife Area	262,400		
East Arm, Great Slave Lake National Park Proposal (under consideration)	370,000		
Proposed National Park - Bluenose			
Proposed National Park - Wager Bay			
Proposen National Park - North Baffin			

Land Area Information for Canada

Description of Land: by Province/Territory	CLASS		
	Lands Closed to mineral activities		
	A1 Protected Areas	A2 Other Closed Lands	B: Restricted Access
Inuvialuit Land Claim			
surface only			7,769,700
surface & sub-surface			1,294,950
Nunavut Land Claim			
North Baffin - surface			8,005,000
North Baffin - surface & sub-surface			601,000
South Baffin - surface			6,026,500
South Baffin - surface & sub-surface			448,000
Keewatin - surface			8,269,500
Keewatin - surface & sub-surface			1,284,500
Kitikmeot E. - surface			3,547,000
Kitikmeot E. - surface & sub-surface			150,000
Kitikmeot W. - surface			5,674,500
Kitikmeot W. - surface & sub-surface			954,500
Sanikiluaq			248,600
Gwich'in			
surface only			1,626,400
surface & sub-surface			429,900
surface & sub-surface			
Sahtu		4,150,000	
TOTAL	16,630,400	4,150,000	
Nova Scotia			
National Parks	135,350		
Natioanl Historic Park/Sites	6,371		
Provincial Parks	9,473		
Provincial Park Reserves	10,106		
Special Places	1,670		
National Defence Lands		4,300	
Mineral Closures		47	
Game Sanctuaries			74,782
Wildlife Management Areas			52,960
Wildlife Parks			567
National Wildlife Areas			2,416
Federal Migratory Bird Sanctuaries			1,863
Preservation Areas			435
Water Supply Watersheds			239,580
Agricultural Lands			173,316
Power Transmission Corridors			15,000
Major Airports			1,954
Urban Land			52,118
Transportation Corridors			68,609
Candidate Provincial Parks			

Land Area Information for Canada

Description of Lands by Province/Territory	CLASS		
	Lands Closed	to mineral activities	
	A1 Protected Areas	A2 Other Closed Lands	B Restricted Access
Candidate Protected Areas			
Candidate Heritage Rivers			
TOTAL	162,970	4,347	
Ontario			
National Parks	219,500		
Provincial Parks	6,335,823		
Conservation Land Act Areas	109,300		
Teme Augama Anishabai Land Caution		1,035,900	
Other (i.e., Indian Reserves, surfaced roads and streets(1976), Other Federal Crown Lands (1978), Pending New Indian Reserves, Railway Lands		1,247,100	
Provincially Significant Wetlands in the Great Lankes-St. Lawrence Region generally off the Canadian Shield		310,000	
Provincially Significant Wetlands in the Great Lakes-St. Lawrence Region of Northern Ontario		not evaluated	
Areas of Natural and Scientific Interest		not evaluated	
Life Science Features only		not evaluated	
Earth Science Features			not evaluated
Municipal Lands			14,065,300
Agricultural Lands(Classes 1-3)			7,283,300
Crown Game Preserves			809,100
Wilderness Areas & Private Reserves			64,500
National Wildlife Areas			44,300
Wildlife Managment Areas			28,800
NAN IMA Area (estimated)			56,457,600
Conservation Authorities			196,200
Niagara Escarpement Plan Area			183,000
Oak Ridges Moraine			130,000
Provincially Significant Wetlands - Boreal			not evaluated
Candidate Protected Areas	67,358		
New areas not evaluated - closed or restricted status to be determined: Old Growth Forests			

Land Area Information for Canada

Description of Lands by Province/Territory	CLASS		
	Lands Closed	to mineral activities	
	A1 Protected Areas	A2 Other Closed Lands	B: Restricted Access
Significant ravine, valley, river and stream corridors;			
Significant portions of the habitat of endangered species and			
Threatened species;			
Significant portions of the habitat of vulnerable species;			
Significant natural corridors;			
Significant woodlots south and east of the Canadian Shield			
Areas of natural and scientific interest;			
Shorelines of lakes, rivers and streams;			
Significant Wildlife Habitat			
TOTAL	6,731,981	2,593,000	
Prince Edward Island			
National Parks	2,590		
Provincial Parks	446		
Historic Parks	93		
Water Park Reserve	1,555		
Ecological Reserve	101		
Migratory Bird Sanctuary			130
Wildlife Management Area			27,368
Nature Trust Area			212
TOTAL	4,785	0	
Quebec			
National Parks	163,550		
Provincial Parks	419,400		
Ecological Reserves	43,150		
Seigneurie Lac-Des-Deux-Montagnes		10,060	
Iles d'Anticosti	862,500		
DND Lands	?		
Faunal Habitat			not evaluated
Migratory Bird Sanctuaries			48,060
Model Forests		14,950	
Montmoresey Forest		6,530	
Aeroport de Mirabel		6,810	
Hydro-Electric Development			
James Bay Reservoir		350,000	
Transmission Lines		278,800	
Ste-Marguerite Development		39,530	
Inuit Communities			
Category 1			787,330
1 special			27,860
Cree Communities			

Land Area Information for Canada

Description of Lands by Province/Territory	CLASS		
	Lands Closed	to mineral activities	
	A1 Protected Areas	A2 Other Closed Lands	B. Restricted Access
1A			329,970
1B			199,160
1B special			25,300
Waskapie Communities			
1 AN			4,140
1 BN			28,490
Proposed Provincial Parks north of 52			
Proposed Ecological Reserves			
TOTAL	1,488,600	706,680	
Saskatchewan			
National Parks	480,975		
National Wildlife Areas	21,325		
Migratory Bird Sanctuaries	61,625		
IBP Sites (International Biological Program)	1,422,523		
Wilderness Parks	438,257		
Provincial Parks	190,197		
Protected Areas - Park Act	5,012		
Provincial Historical Sites	23		
Ecological Reserves	815		
Indian Land Entitlement		270,734	
Indian Land Settlement		35,845	
National Defence		653,788	
Town/City Land		30,479	
Land Withdrawn from Staking		6,823	
Provincial Parks			502,091
(only in resource development area)			
Game Preserves			115,118
Wildlife Refuges			3,107
RAMSAR Sites (Waterfowl habitat)			79,102
Recreation Sites			42,159
Regional Parks			8,794
PFRA Community Pastures			708,532
Indian Reserve			616,674
Provincial Forest Area			423,680
TOTAL	2,620,752	997,669	
Yukon			
Ivvavik National Park	1,016,840		
Vuntut National Park	434,500		
Kluane National Park Reserve	2,201,330		
Territorial Parks (2)	12,770		
Tombestone Area	40,000		

Land Area Information for Canada

Province/Territory	CLASS		
	Lands Closed to mineral activities		
	A1 Protected Areas	A2 Other Closed Lands	B: Restricted Access
North Slope IFA (approximate)	830,000		
Special Management Area	790,000		
Remainder of North Yukon Withdrawal outside parks, North Slopes, SMA's, and First Nation's Land		750,000	
10 First Nation Land Claims pending finalization (closed to staking only)		1,570,000	
Other lands closed (dwellings, burial sites, cemetaries, airport, muncipal land)		100,000	
Category B Settlement Lands (surface only)			620,000
Wildlife Sancturaries and Special Management Areas			1,290,000
Private lands, Community Block Transfers, agriculture, grazing, and timber leases.			29,000
Territorial Campgrounds and Airports			6,000
Highways and roads, pipeline corridors			47,000
TOTAL	5,325,440	2,420,000	
National Total (ha)	47,637,659	13,180,122	
Percent of Canada	4.78	1.32	

Appendix 3

Mineral Development Decision Sequence and Glossary

MINERAL DEVELOPMENT DECISION SEQUENCE

TYPICAL TIME FRAME (years)	TYPICAL COST ($000'S)	ACTIVITY	PROCESS (See Glossary)	DECISION POINT
0.5 - 1.0	250 - 500	Area Selection	Geological Potential	Approve Program
0.5 - 1.0	500	Reconnaissance	Ground and/or Airborne Surveys	Acquire Ground YES/NO
stake 0.1 negotiate 1.0	250 - 500	Land Acquisition	Either Stake Claims or Negotiate "Land" to Gain Mineral Title	
0.5	250 - 500	Ground Surveys	Delineate Anomalies	Drill YES/NO
0.5	500	Scout Drilling	Evaluate Rank with Alternative Projects	
0.5	500 - 4,000	Detailed Surveys/ Mineralogy Follow-Up Drilling		Large Scale Drilling Program YES/NO
(3 - 4)	250 per year	Begin Baseline Studies for E.I.S.		Pre-Feasibility YES/NO
1 - 2	4,000 - 10,000	Delineation Drilling		
0.3	500	Pre-Feasibility Studies	Evaluate/Rank Define Critical Factors	
1 - 2	4,000 - 10,000	Bulk Sampling Metallurgical Testing Extensive Environmental Studies	Grades Process Recoveries	Feasibility Study YES/NO
1 - 3	UG test $10-25M	Underground Mining Test?		
0.5	2,000	Feasibility Studies	Profitable ?	GO/NO GO
0.5	250	Investment Decision	Financing	GO/NO GO
1 - 2	1,000	Environmental Assessment Permitting	Adjust Design Restudy Profitability	GO/NO GO
Totals Preconstruction				
7 - 12 (15)				
2 - 5	$15-32M (60)M $250 - 1,000M	Construction		
		Production		
9 - 17 (20) years if "go" at each decision point				

Glossary

Area Selection	*For a given commodity/metal/mineral, (eg. gold, diamonds) in a particular geological setting, where in Canada is your preferred search area.*
Reconnaissance	*In order to narrow down the search area you carry out airborne geophysical or ground geochemical surveys to define an anomalous area.*
Land Acquisition	*Either by claim staking or by negotiation with current owners acquire or option mineral title.*
Ground Surveys	*Prospecting, geological, geochemical, geophysical surveys to delineate anomalies/ drill targets on the ground. There are very strict guidelines on environmental permitting for these activities.*
Scout Drilling	*A few (1-6) diamond drill holes, (± 200m in length) to investigate rock type, alteration, mineralization, relative to your target "model". Again there is very strict permitting covering all aspects of drilling.*
Detailed Surveys/Mineralogy	*Various methods to define in which direction to next drill, eg. along strike and/or at depth to intersect "better" (economic) thickness and/or grade of mineralization.*
Follow-up drilling	*Drill testing these directional indications, often on a systematic grid in order to give an indication of potential size and possible grade.*
Baseline Studies for E.I.S.	*Baseline studies in order to produce a comprehensive Environmental Impact Statement (E.I.S.). Before any major program is undertaken the current status of the local "natural" environment is documented.*

Delineation Drilling	*Detailed drilling, on a uniform grid basis, to produce a high quality data base from which to calculate tonnage and grade (%, oz. per ton) of the relevant commodity/mineral/metal. This is usually the first activity with a major environmental impact, may involve 2-3 drills for many months, plus a camp with > 20 people for a period of up to 1 year.*
Pre-Feasibility Studies	*Now having a tonnage and grade for the deposit, one can evaluate what are the critical factors relating to its economic viability eg. mining method; metallurgical recovery; power supply; transportation; environmental impact etc. These studies highlight what are the critical uncertainties, and what data is needed before a full economic analysis can be attempted.*
Bulk Sampling *Metallurgical Testing*	*A large (± 50,000 tonnes) and representative sample is required in order to carry out bench tests/pilot plant studies on the mineralogy/metallurgy so that optional processing methodology can be established. Thus details on: concentrates, grades, process costs, energy requirements can be provided for a feasibility study. The bulk sample is usually obtained from underground, access given by a decline/ramp or if necessary by a shaft, but then at a very substantial cost and time. Test mining and rock strength characteristics are also established at this time.*
Extensive Environmental Studies	*Now processing methods have been established the nature/chemistry of waste rock, tailings and effluent water is known, and mining method and minimum mine life established. Thus a complete operating environmental procedure and a closure/reclamation plan can be established.*

Feasibility Study	*<u>All</u> the economic factors affecting the deposit are run through numerous scenario's, to establish the optimum production rate/mine life and to various degree's of uncertainty whether or not it is economically wise to place the deposit in production.*
Investment Decision	*As construction capital will range from $250M to $1 B, outside debt/equity fiance is usually required.*
Environmental Permitting	*Prior to construction the various Government Departments involved will have to give final permits. Particular concerns may lead to design changes.*

Appendix 4

Examples of Memoranda of Understanding and Interim Agreements

DRAFT

MEMORANDUM OF UNDERSTANDING BETWEEN <name of First Nation> AND THE MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES

Preamble

<Name of First Nation> is seeking a more equitable role in mineral exploration and mining development within their traditional territories. Without prejudice to the existing legislative framework, <name of First Nation> should have a role in the management of mineral resources to ensure a balance of economic, cultural and environmental factors and ensure that their interests in land and resources are considered and protected.

This Memorandum of Understanding is without prejudice to aboriginal rights and treaty negotiations.

Purpose

- To outline principles which will lead to the development of a positive working relationship between <name of First Nation> and the Ministry of Energy, Mines and Petroleum Resources.

- To identify short, medium and long term goals for <name of First Nation> and the ministry to work towards.

- The progress in reaching the goals outlined in the agreement should be reviewed from time to time by <name of First Nation> and the ministry.

Principles

Environment

- Mineral exploration and mining activities must meet provincial and federal environmental legislative requirements, as well as avoid unlawfully infringing First Nations' aboriginal rights.

- Provincial environmental standards must be enforced.

Traditional cultural and sustenance resources

- Impacts of proposed mineral activities on traditional cultural and sustenance resources must be addressed by mine proponents.

.../2

Economic Development

- Mining projects should attempt to provide positive economic impacts for First Nations.

- The ministry will help bring industry and First Nations together to attempt to create better employment, training and business opportunities.

Information Sharing

- Information generally available from the ministry related to mineral resources will be shared with First Nations.

PROCESS

Mineral Exploration Referrals

- Before approval is granted for mechanical surface disturbance of the ground for mineral exploration within traditional territories, notices of work will be faxed by the ministry, with follow-up in the mail, to the appropriate band and copied to the relevant Tribal Council.

- By agreement of the ministry and <name of First Nation>, other methods of information exchange may be employed.

- Within thirty days, First Nations will use reasonable efforts to provide written comments as to whether there is any conflict between the proposed mineral exploration work and any aboriginal rights in the area.

- In the event that a conflict is identified, the ministry will meet with First Nations to determine whether the proposed mineral exploration work and aboriginal rights can coexist.

Proposed Mine Developments

- All mine projects proposed under the provincial Mine Development Assessment Process will be referred to First Nations, in whose traditional territory the project lies.

- The ministry will endeavour to provide assistance to First Nations to interpret technical material.

.../3

- As part of the review of a proposed development, terms of reference (see attachment 1) will be drafted which identify issues raised by First Nations before being sent to mine proponents to undertake required studies.

- In the event that a conflict is identified, the ministry will meet with First Nations to determine whether the proposed development and aboriginal rights can coexist.

- When public liaison, aboriginal liaison and/or environmental monitoring committees are established for projects, First Nations affected by such projects will be invited to sit on such committees.

GOALS

The parties agree to work towards achieving the following goals:

Short term

- Ministry staff will meet with First Nations to provide an overview of mineral industry activities and the mineral resources within their traditional territories.

- The ministry and First Nations will explore possibilities for providing information of claims staked within their territories.

- The ministry will endeavour to provide a summary of the types of job, skills, and training requirements at operating mines.

- The ministry will endeavour to facilitate First Nations' participation in existing training programs and attempt to bring industry and First Nations together to create training opportunities.

Medium term

- The ministry will attempt to facilitate prospectors' training targeted to First Nations and information on related employment opportunities.

- The ministry will consider First Nations' participation on regional mine development review committees.

.../4

Long term

- o First Nations and the ministry will meet to review and discuss issues of mutual interest, for example, provincial reclamation policy, and current arrangements used to collect mineral royalties.

- o First Nations and the ministry may undertake a review of existing mineral legislation, such as the Indian Reserves Mineral Resources Act, to determine whether legislative changes should be recommended.

COMMENCEMENT, TERM AND TERMINATION

- o This is an interim agreement until such time as <name of First Nation> reach a treaty settlement.

- o This agreement comes into effect upon signing by the parties.

- o The agreement is valid until an interim protection measures agreement, or similar agreement, is reached between the <name of First Nation> and the province as part of treaty negotiations; however this agreement may be terminated by any party upon sixty (60) days notice in writing given to the other parties.

In witness whereof the parties hereto have executed this Agreement the day of

, 1993

Signed on behalf of the
Ministry of Energy, Mines
and Petroleum Resources

Minister

Witness

Signed on behalf of the

Witness

1993-10-12

Generic Terms of Reference for Aboriginal-Related Topics to be Addressed by the Proponent in an Application for a Mine Development Certificate

Affected Aboriginal Groups

Describe affected Tribes or Tribal Councils in terms of any comprehensive land claims, overlapping claims, and proximity to the proposed minesite or infrastructure.

Aboriginal Response to Prospectus

- Identify the Aboriginal groups that received the prospectus noting groups which provided a written or verbal response; and those Tribes/Tribal Councils which did not respond.
- List the issues raised by Aboriginal groups, noting which group raised what issue, and briefly summarize the comment or concern.
- In addition, the province identifies other issues which are of universal relevance to First Nations. If not already raised by Aboriginal groups, these could include:
  - water quality;
  - fish and wildlife (including trapping);
  - burial grounds, sacred places, traditional settlements or campsites;
  - food and medicine plants;
  - increased access by non-Aboriginals, and interference with access by Aboriginals to traditional hunting, fishing, food gathering, or sacred sites by roads, fences, gates, railways and no trespassing signs;
  - Aboriginal socio-economic impacts; and
  - employment and training.

Addressing the Issues

- List those issues outside the scope of the project review, and briefly describe the forum in which they are properly addressed, (e.g. land claims - British Columbia Treaty Commission).
- Identify issues raised by both Aboriginal groups and the province during the review of the prospectus, which must be addressed by the proponent in the application for the Mine Development Certificate. List the sections of the application which will address these issues (e.g. 'Surface Water and Groundwater Quality', 'Fisheries and Fish Habitat' etc.).
- Identify those topics which have been targeted for study by both the province and Aboriginal groups, but which require an additional Aboriginal component (for example: archaeological resources protection; wildlife and wildlife habitat, including proposed mitigation for habitat loss; socio-economic considerations). Describe the additional research or work required by the Aboriginal group e.g.:
- With regard to archaeological resources, ethnohistoric and other research should be conducted, as necessary, to identify and protect sites of significance to Aboriginals.
- The Aboriginal component of a socio-economic study must describe the following topics to a satisfactory level of detail: the Tribe(s) traditional areas; present location; brief Tribal history; land claims and trapping areas; food and medicine plants; increased access by non-Aboriginals and interference with access by Aboriginals to: traditional hunting, fishing, food gathering, or sacred sites by roads, fences, gates, railways and no trespassing signs.
- In addition, the Aboriginal component of the socio-economic study should also address such topics as: population demographics; types of employment opportunities; training; and/or potential contracting opportunities.

Overall, the report should clearly identify Aboriginal community impacts, benefits and mitigative measures.

Process

The company should consult with the appropriate Tribes and Tribal Councils to confirm that the terms of reference properly address the points raised by Aboriginal groups during the review of the prospectus. In addition, the company and Aboriginal groups should confer on an appropriate choice of consultant who may be required to perform the work.

Overall, an ongoing dialogue should be established between the company and Aboriginal groups to facilitate their input into Aboriginal studies regarding this project, and review of such final reports.

DRAFT FRAMEWORK AGREEMENT · May 17, 1991

This Agreement made this day of , 1990.

B E T W E E N:

FORT WILLIAM FIRST NATION
GULL BAY FIRST NATION
LONG LAKE #58 FIRST NATION
MICHIPICOTEN FIRST NATION
OJIBWAYS OF PIC RIVER FIRST NATION
PAYS PLAT FIRST NATION
PIC MOBERT FIRST NATION
RED ROCK FIRST NATION
ROCKY BAY FIRST NATION
SANDPOINT FIRST NATION
WHITESAND FIRST NATION

(hereinafter referred to as the "First Nations")

- and -

GOVERNMENT OF CANADA

(hereinafter referred to as "Canada")

- and -

GOVERNMENT OF ONTARIO

(hereinafter referred to as "Ontario")

WHEREAS the parties hereto have for the past several years participated in discussions with the intent to resolve outstanding issues of common concern with respect to land and a larger land base for the First Nations, including but not limited to working towards balancing the following objectives: 1) Ensuring and maintaining a pristine environment and unspoiled wilderness; 2) Developing and managing land for surface harvesting of renewable resources; 3) Developing, managing and reclaiming land for subsurface mineral extraction; 4) Water management and possible exporting; 5) Economic and socio-economic development; and 6) Meeting social needs;

AND WHEREAS the parties hereto acknowledge the importance of the need to address and resolve the issues described herein and to develop a process to address those issues in a timely manner and in accordance with an agreed upon workplan;

AND WHEREAS the parties are desirous of negotiating settlement of these matters in a timeframe not to exceed two years from the date of the signing of this framework agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto, in consideration of the mutual covenants hereinafter set out, agree as follows:

1. Each and every party hereto hereby declares their commitment to enter forthwith into negotiations to reach Agreements regarding the outstanding issues within the agreed upon timeframe specified herein.

2. The parties hereby commit themselves to use their best efforts to negotiate and conclude Agreements regarding Land and a larger land base, including but not limited to working toward balancing the following objectives: 1) Ensuring and maintaining a pristine environment and unspoiled wilderness; 2) Developing and managing land for surface harvesting of renewable resources; 3) Developing, managing and reclaiming land for subsurface mineral extraction; 4) Water management and possible exporting; 5) Economic and socio-economic development; and 6) Meeting social needs; in a spirit of goodwill and good faith.

3. The parties hereto agree that these negotiations shall be chaired and facilitated by the Indian Commission of Ontario pursuant to its mandate as set out in its respective orders in council, and pursuant to its workplans.

4. The First Nations hereby reserve their rights to continue or enter into later and/or separate negotiations,tripartite or bi-lateral, regarding self-government, economic development

and such other issues as the parties hereto may agree.

5. The parties agree that nothing in this Agreement shall be construed so as to affect, derogate from or abrogate aboriginal, treaty, constitutional or any other rights of the aboriginal parties or its members or of Ontario or of Canada, or as an acknowledgement by any party of any right asserted by any other party or of the validity of any claims asserted by any other party.

6. Canada and Ontario shall on an equal basis fund the consultation and negotiation costs of the First Nations in connection with the implementation of this Agreement during the two years following the signing of this Agreement, in accordance with agreed upon budgets and workplans.

7. The parties have agreed that the offset clause, attached hereto as Schedule "A", shall form part of this Agreement and the parties further agree that the said offset clause does not derogate from any of the rights set out in paragraph 5 herein.

8. This agreement and all commitments contained herein shall come into force on the date of its execution and shall continue in force for a period of two years, unless amended by agreement of all parties, or terminated by one or more of the parties, after having given three (3) months notice in writing to the other parties hereto, with notice by one or more individual First Nation not constituting notice by the "First Nations" as described herein.

9. The parties agree to request the necessary ratification of any agreement(s) reached through this process in a manner appropriate to each party with the intention that such agreement(s) will be legally enforceable by any party after all parties have ratified such agreement(s).

May 17, 1991

DRAFT INTERIM MEASURES AGREEMENT

This Agreement made this day of , 1991.

B E T W E E N:

FORT WILLIAM FIRST NATION
GULL BAY FIRST NATION
LONG LAC #58 FIRST NATION
MICHIPICOTEN FIRST NATION
OJIBWAYS OF PIC RIVER FIRST NATION
PAYS PLAT FIRST NATION
PIC MOBERT FIRST NATION
RED ROCK FIRST NATION
ROCKY BAY FIRST NATION
SANDPOINT FIRST NATION
WHITESAND FIRST NATION

(hereinafter referred to as the "First Nations")

- and -

GOVERNMENT OF CANADA

("hereinafter referred to as "Canada")

- and -

GOVERNMENT OF ONTARIO

(hereinafter referred to as "Ontario")

WHEREAS Canada, Ontario and the First Nations have signed a Framework Agreement to enter into negotiations to reach Agreements regarding Land and a larger land base;

AND WHEREAS the parties wish to work towards balancing the preservation of the land, surface and subsurface minerals and resources, air quality, water and aquatic life, wildlife and natural resources, both renewable and non-renewable, around the First Nations in as pristine a state as is possible in order to ensure traditional First Nation pursuits such as hunting, trapping, gathering and fishing, and the quiet enjoyment thereof, with ensuring economic future development, community development, and other forms of development for the First Nations and the people of Ontario;

AND WHEREAS the parties wish to establish a procedure for reviewing and resolving issues that impact on the First Nations during these negotiations and for making recommendations to the Parties to resolve these issues;

AND WHEREAS the Parties wish to establish a procedure for notifying First Nations of planned developments, dispositions and activities which may have a significant impact on those First Nations;

AND WHEREAS the Parties wish to ensure that the First Nations have adequate resources to properly respond to the above notices;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto, in consideration of the mutual covenants hereinafter set out, agree as follows:

1.0 PURPOSE

1.1 The general purpose of this agreement is twofold:

(a) To establish a procedure to review issues of concern to one or more First Nations, or any of the Parties, and to make recommendations to the Parties to resolve these issues; and

(b) To ensure the notification of First Nations and the Ojibway 1850 Treaty Council of planned developments, dispositions and other activities and events which relate to the subject matter of the Framework Agreement regarding Land and a larger land base, including but not limited to working towards balancing the following: 1) ensuring and maintaining a pristine environment and unspoiled wilderness; 2) developing and managing land for surface harvesting of renewable resources; 3) developing, managing and reclaiming land for subsurface mineral extraction; 4) water management and possible exporting; 5) economic and socio-economic development; and 6) social needs.

2.0 SCOPE

2.1 These provisions apply to Crown lands in Ontario within the boundaries set out in the map attached to this Agreement as Schedule "B".

3.0 DURATION

3.1 This Agreement shall take effect upon a date agreed to by the Parties, in writing, which reflects the formal commencement of negotiations on Land and a larger land base, and shall remain in effect for the duration of the negotiations pursuant to the Framework Agreement, signed by the parties and dated the day of , 1991.

3.2 The Parties may, by agreement in writing, amend or terminate this agreement on the same terms and conditions as contained in the Framework Agreement, signed by the parties and dated the day of , 1991.

3.3 The Parties agree to revisit this Interim Measures Agreement after it has been in force for a period of six months, and all parties agree to reopen the negotiations regarding this Interim Measures Agreement at that time, should any one of the Parties so request.

3.4 With respect to mining activities the parties hereby acknowledge a special difficulty regarding the operation of this Agreement and notice provisions as they relate to mining activity and the Mining Act, R.S.O. 1980, c.268 as amended and other statutes such as the Forest Fires Prevention Act and the Public Lands Act, and accordingly the parties agree that the notification provisions of paragraphs 6.1 and 6.2 of this agreement do not apply to mining activities and all parties further agree to revisit this issue pursuant to section 3.3 above unless the parties reach an agreement on this issue in the interim.

3.5 The parties agree that wherever mining is referred to in this agreement it shall include mineral exploration and mineral activities including reclamation.

4.0 INTERIM MEASURES GROUP

4.1 An Interim Measures Group shall be established by the Parties.

4.2 The Interim Measures Group will make recommendations to the Parties to resolve issues in accordance with the process outlined in Section 5.

4.3 The Interim Measures Group will be an ad hoc group which will consist of one representative each from Canada, Ontario and the First Nations, at a senior level.

4.4 The Indian Commission of Ontario will chair and act as a process facilitator to the Interim Measures Group and will keep all Parties informed of the activities of the Interim Measures Group.

5.0 REVIEW & RECOMMENDATION PROCESS

5.1 Any Party, or individual First Nation may bring an issue to the Interim Measures Group, in written form, on notice to all Parties, provided that the issue so brought relates to the subject matter of the negotiations pursuant to the Framework Agreement.

5.2 The Interim Measures Group shall review all issues brought to it. The Interim Measures Group shall make recommendations to the Parties to this agreement to resolve the issue , in writing or otherwise, if the issue falls within the subject matter of the Framework Agreement relating to, or affecting, Land and a larger land base, including but not limited to working towards balancing the following: 1) ensuring and maintaining a pristine environment and unspoiled wilderness; 2) developing and managing land for surface harvesting of

renewable resources; 3) developing, managing and reclaiming land for subsurface mineral extraction; 4) water management and possible exporting; 5) economic and socio-economic development; and 6) social needs.

5.3 The Parties, and each of the First Nations agree that prior to bringing an issue to the Interim Measures Group, each party will make reasonable efforts to resolve the issue utilizing existing processes, and that in extraordinary circumstances the issue can be brought concurrently to the Interim Measures Group and existing processes.

5.4 The Interim Measures Group shall strive for consensus in its recommendations; however, where the recommendations of the Interim Measures Group are not unanimous, then any recommendation shall state the position of each of the Parties with respect to that recommendation.

5.5 The recommendations of the Interim Measures Group to the Parties may include the recommendation that the issue be resolved utilizing any existing process available to the Parties, or that a new approach be taken to the resolution of the issue, or that a new process be developed, and may include such ancillary recommendations as may be appropriate, and may include recommendations regarding resources to address same for the First Nations.

5.6 The Parties will keep the Interim Measures Group and the Indian Commission of Ontario apprised of the progress of any issue resolution initiated as a result of the Interim Measures Group's recommendations.

6.0 NOTIFICATION

6.1 Canada and Ontario hereby agree to notify any effected First Nation(s), and for informational purposes the Ojibway 1850 Treaty Council, of any significant planned developments, dispositions or activities relating to, or affecting, Land and a larger land base, including but not limited to working towards balancing the following: 1) ensuring and maintaining a pristine environment and unspoiled wilderness; 2) developing and managing land for surface harvesting of renewable resources; 3) developing, managing and reclaiming land for subsurface mineral extraction; 4) water management and possible exporting; 5) economic and socio-economic development; and 6) social needs.

6.2 It is agreed between the parties that "Planned developments, dispositions or activities", referred to in Section 6.1, shall be those which significantly increase impact on resources on Crown Lands or Indian Lands and shall include, but not be limited to, the following:

a) applications for land use permits, licences of occupation, letters patent and land use plans, pursuant to the Public Lands Act, R.S.O., 1980 c. 413, as amended,

b) applications for licences for the harvesting of wild rice pursuant to the Wild Rice Harvesting Act, R.S.O. 1980, c. 532, as amended.

c) applications for commercial fishing licences pursuant to the Fisheries Act, R.S.C. 1970 c F-14, 1970, as amended and/or the Game and Fish Act, R.S.O. 1980 c. 182, as amended.

d) forest management agreements, timber management plans and district cutting licences pursuant to the Crown Timber Act, R.S.O. 1980 c. 109, as amended,

e) applications for work permits pursuant to the Forest Fires Prevention Act, R.S.O. 1980 c. 173, as amended.

f) applications for permits to take, or discharge, water pursuant to the Ontario Water Resources Act, R.S.O., 1980 c. 361, as amended,

g) applications for approvals pursuant to the Lakes and Rivers Improvement Act, R.S.O. 1980 c. 229, as amended,

h) applications for trapping licences pursuant to the Game and Fish Act, R.S.O., 1980 c. 182, as amended,

i) applications for certificates of approval under the Environmental Protection Act, R.S.O., 1980, c. 141, as amended,

j) applications for tourist establishment licences under the Tourism Act, R.S.O. 1980, c. 507, as amended,

k) applications for exemptions from and designations under the Environmental Assessment Act, R.S.O. 1980, c. 140, as amended,

l) potential hydro electric developments and transmission corridors under active consideration,

m) potential provincial and national park sites under active consideration,

n) waste storage sites under active consideration,

o) changes in municipal boundaries pursuant to the Municipal Act, R.S.O. 1980, c. 302, as amended.

6.3 a) The notification required pursuant to Section 6 of this Agreement shall be given at the earliest possible opportunity, and

b) The government authority notifying the effected First Nation(s), and the Ojibway 1850 Treaty Council, shall not proceed to grant a permit or authority for the planned development, disposition or activity for a period of sixty (60) days following such notification, unless the effected First Nation(s) should consent in writing to an earlier granting of the permit or authority, and

c) Where notification as required by Section 6.3 (b) is impossible, or may endanger human life, a government authority may grant a permit or authority for a planned development, disposition, or activity without providing the notification required by Section 6.3 (b). In such cases, the government authority shall provide notice to the effected First Nation(s), and the Ojibway 1850 Treaty Council, immediately upon the granting of such permit or authority.

6.4 The government authority giving the notification under this section (6.0 NOTIFICATION) shall provide sufficient information to enable the effected First Nation(s) to make a preliminary assessment of the planned development, disposition or activity and shall, where possible, provide to the effected First Nation(s) a statement in writing outlining:

a) the purpose of the planned development, disposition or activity;

b) the nature and extent of the planned development, disposition or activity; and

c) information and technical date in sufficient detail to permit preliminary assessment of the planned development, disposition or activity.

6.5 The effected First Nation(s) may, as soon as is practicable subsequent to receiving notification pursuant to this section, and in any event within the minimum sixty (60) day notice period, file a written objection with the parties and request that the matter be referred to the Interim Measures Group established in Section 4 of this Agreement. The government authority receiving a written objection shall not proceed to grant the permit or authority for the planned development, disposition or activity, until the matter has been fully dealt with by the Interim Measures Group (which the parties agree shall be within the minimum sixty day notice period). Where the permit or authority in question is an extension or renewal of an existing right, then that right shall be deemed to automatically remain in force while the matter is being considered by the Interim Measures Group.

6.6 It is understood among the parties that the government authority may issue a permit or authority after the expiry of the 60 day notice period.

6.7 Canada and Ontario agree to provide the First Nations and/or the Ojibway 1850 Treaty Council with appropriate resources to respond properly to notice under this agreement and to properly participate in the processes that it creates, in accordance with budgets and workplans to be agreed upon.

6.8 Nothing in this agreement shall be construed as a requirement of any Party to make available information that is by law privileged or exempt from disclosure.

6.9 Any Party, or the Ojibway 1850 Treaty Council, which believes that the appropriate government authority has not provided notification in accordance with this section, may notify the Indian Commission of Ontario, which shall then bring the matter to the attention of the said government authority, or the Interim Measures Group, as is appropriate in the circumstances.

7.0 GENERAL

7.1 In the event that one (or more) First Nation has entered into, or enters into, a specific agreement with Canada and/or Ontario relating to Land and a larger land base, then the provisions of that specific agreement with respect to notification and/or issue resolution shall apply and the provisions of this agreement shall not apply unless incorporated into such specific agreement.

7.2 The Parties agree that nothing in this agreement shall be so construed as to affect, derogate from or abrogate aboriginal, treaty, constitutional, or any other rights of the aboriginal parties or its members or of Ontario or of Canada, or as an acknowledgement by any party of any right asserted by any other party or of the validity of any claims asserted by any other party.

IN WITNESS WHEREOF the parties hereto have signed this agreement on the day and year first above written.

SIGNED SEALED AND DELIVERED
on behalf of Canada.

_____ _____

Witness

SIGNED, SEALED AND DELIVERED
on behalf of Ontario.

_____ _____

Witness

FINAL DRAFT

ONTARIO - WINDIGO - SHIBOGAMA

PLANNING AGREEMENT

Northern Ontario Land Agreement Implementation Managing FINDraft 25/07/94

RECEIVED
JUL 28 1994
Land Use Policy and Planning Section

CAT LAKE FIRST NATION
WEAGAMOW LAKE FIRST NATION
KINGFISHER LAKE FIRST NATION
WUNNUMIN LAKE FIRST NATION
WINDIGO TRIBAL COUNCIL
SHIBOGAMA TRIBAL COUNCIL
ONTARIO

Professor Alan Grant
Facilitator

Phone: (416) 736-5036
Fax: (416) 736-5736

November 9, 1990

MINISTRY OF NORTHERN DEVELOPMENT & MINES
JUN 13 1991
RECEIVED - SUDBURY
CORPORATE PLANNING SECRETARIAT

WHEREAS the Parties hereto are desirous of putting into place In·im Planning Boards with a view to developing more permanent solutions to matters related to the planning of land-use, resource development and associated issues, as described herein, within the area set out in Appendix 'A' to this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants hereinafter set forth, the Parties hereto agree as follows:

Structure

1(1) ONTARIO shall establish a Windigo Interim Planning Board and a Shibogama Interim Planning Board for a period of up to five years. Each Interim Planning Board is to be effective on the execution of this Agreement or as soon thereafter as is reasonably practicable.

1(2) The membership of each Interim Planning Board shall comprise an equal number of representatives of the Province of Ontario and of the affected First Nations together with such independent chairperson(s) as are agreeable to both.

1(3) The area of jurisdiction of each Interim Planning Board shall be as set out in Appendix 'A' to this Agreement.

1(4) In subparagraph 1(2) herein, the expression "affected First

Nations" means THE NATIONS, WINDIGO and SHIBOGAMA as appropriate.

Purpose, goal and mandate

2(1) Each Interim Planning Board shall give advice to the Province of Ontario by developing a plan for land-use and resource development in the area subject to its jurisdiction and by reviewing and commenting on such applications and matters, including those set out in Appendix 'B' to this Agreement, as each Interim Planning Board may direct.

2(2) Each Interim Planning Board shall identify potential opportunities for both resource-based economic development and the practice of traditional economic activities and shall develop community participation models suitable for use in remote northern Ontario.

Objectives

3. Each Interim Planning Board shall seek to achieve the following objectives:

(a) protect and enhance the environmental quality and character of each planning area;

(b) enhance the economic, social and cultural development within each planning area;

(c) promote the traditional economic activities of THE NATIONS;

(d) protect significant religious, cultural and historic sites;

(e) identify development opportunities which support the orderly economic development of northern Ontario; and

(f) assist provincial agencies and ministries in their exercise of planning, management and regulatory functions.

Principles

4. Each Interim Planning Board shall, within the area of its jurisdiction as set out in Appendix 'A', give consideration to the following principles in the exercise of its functions:

(a) the integration of resource uses, to the extent that they can be made compatible,

(b) the utilization of species and resources on a sustainable development,

(c) the conservation of renewable natural resources and the orderly development of non-renewable natural resources,

(d) the respect for and maintenance of existing resources uses,

(e) the sharing of economic and social benefits from resource development activity with the people who live in the planning area,

(f) the provision of the widest possible public consultation, and

(g) the interchange of timely comments and recommendations

between each Board and Provincial ministries and agencies.

Functions

5(1) The Interim Planning Boards shall:

(a) primarily be responsible for giving advice to Ontario regarding proposed land-use activities in its area of jurisdiction,

(b) undertake studies and compile a data-base relating to land-use, resource development and environmental protection within the planning areas,

(c) prepare a draft land-use plan for the planning areas, within approximately three years,

(d) review applications and matters (including those set out in Appendix 'B') and recommend, with reasons, appropriate revisions or terms and conditions, if any,

(e) communicate all recommendations on applications, permits and such like together with any proposed terms and conditions made by the Interim Planning Boards, to the responsible government agency for attention, information and appropriate action. These communications shall be timely and will not introduce unreasonable delays in the normal application processes,

(f) ensure that an effective and meaningful public participation process is implemented, so that those potentially affected by, and/or having an interest in,

the issues being dealt with by the Boards can provide input and assist the Boards in fulfilling their mandate. Appropriate public participation processes will be set out in the draft land use-plan in sufficient detail to allow other government agencies and ministries to consider using them in other jurisdictions in northern Ontario, and

(g) submit their plans and reports to a Minister of the Crown. Final decisions shall rest with the appropriate authority under the applicable provincial law. The Minister shall pass the recommendations of Interim Planning Boards to the appropriate decision-making authority.

5(2) The communication process to be used by the Interim Planning Boards will, as a minimum, include the following:

(a) clear and accurate information in the appropriate language(s),

(b) identification of potential issues and areas requiring input,

(c) proactive solicitation of public input,

(d) adequate notice and time for public review,

(e) careful consideration of public input prior to the final decision, and

(f) preparation of a public summary of the comments received and the Interim Planning Boards' response.

5 In the event that a decision by the appropriate provincial authority differs from the recommendation made by either Interim Planning Board or both, the appropriate provincial authority shall give its reasons, in writing, for any variation to the Minister and the Interim Planning Board involved.

Evaluation and more permanent arrangements

6. The Parties hereto shall cause to be carried out, after three years of operation of the Interim Planning Boards, a major assessment and evaluation of their effectiveness and appropriateness with a view to establishing more permanent arrangements with on-going responsibilities to be negotiated if, in the view of the Parties hereto and having regard to the evaluation results, this course is deemed advisable.

Operational Framework

7(1) All relevant and applicable laws of Ontario and Canada shall apply.

7(2) The plans of the Interim Planning Boards may contain but will not be limited to:

(a) policies for the economic, social and physical development of the area covered by the plans,

(b) land-use designations to permit, restrict, prohibit or

enhance various land-use activities, and

(c) land-use policies to protect, conserve or enhance various land areas.

7(3) In the preparation of a draft plan for the planning areas, the Interim Planning Boards may consider the following matters:

(a) community demographics and social indicators,

(b) community-based development, land and resource needs,

(c) implementation of the applicable provision of any relevant resource development agreements,

(d) the quality and distribution of the environmental resources of the planning areas,

(e) cultural, economic, social, and resource development trends affecting northern Ontario generally and the planning areas particularly,

(f) employment development opportunities,

(g) resource development potentials,

(h) incorporation of traditional use of land and traditional economic activities into the land-use plan, and

(i) other matters as required in the review of development applications and preparation of the draft plan.

7(4) The Interim Planning Boards shall strive for consensus in decision making.

7(5) Where there is no agreement by an Interim Planning Board, the

chairperson shall make non-binding recommendations for resolution of outstanding issues by the Interim Planning Board concerned or propose an alternative dispute resolution mechanism, as appropriate.

7(6) Without limiting the generality of subparagraph 7(5), the chairperson may make a report which fairly and accurately sets out the differences of views held by the members for presentation to the Interim Planning Board or others as agreed by the Interim Planning Board.

Resources

8(1) The Interim Planning Boards will hire or cause to be hired administrative support and planning staff as required.

8(2) Priority will be given to training and hiring members of THE NATIONS or of Nations affiliated with WINDIGO or SHIBOGAMA.

8(3) Nothing shall prevent the staff of the Interim Planning Boards and the staff of various ministries and agencies with whom they deal, from contacting each other directly in the orderly and usual course of business.

8(4) The Interim Planning Boards will interact with other planning bodies to reduce the duplication of planning efforts and to seek comments on draft plan policies. The Interim Planning

Boards will be mindful of and seek to accommodate existing Provincial land and resource use policies.

8(5) The Interim Planning Boards may enter into agreements with consultants for the production of inventories and other reports required to carry out the Interim Planning Boards' responsibilities.

Financing

9(1) The Interim Planning Boards will prepare and submit an annual budget to ONTARIO and the Windigo Tribal Council or the Shibogama Area Tribal Council, as appropriate, outlining the specifics of how they intend to fulfil their duties and responsibilities.

9(2) ONTARIO agrees to provide funding for the operating costs and to allocate $200,000.00 for each full year of each Interim Planning Board's operation, subject to the approved annual budget and signed terms and conditions.

9(3) The Interim Planning Boards will provide financial statements and audits to ONTARIO, as required.

9(4) Out-of-pocket expenses for travel, food and accommodation will be made available to the Interim Planning Board members.

Appendix 5

Tri-Council Statement of Commitment to Complete Canada's Network of Protected Areas

APPENDIX 5

TRI-COUNCIL STATEMENT OF COMMITMENT TO COMPLETE CANADA'S NETWORKS OF PROTECTED AREAS

Preamble

This Statement is intended as a public statement of consolidated political will to complete Canada's networks of protected areas by the year 2000. Realization of this commitment will build upon more than a century of conservation efforts in Canada. The Statement's endorsement by three separate federal-provincial councils is a recognition of the need for both inter-jurisdictional and inter-disciplinary cooperation. This Statement is the beneficiary of many international commissions, resolutions and declarations - the World Conservation Strategy, the world Charter for Nature, the world Commission on Environment and Development, Caring for the Earth: A Strategy for sustainable Living; and most recently, in February 1992, the Caracas Declaration from the Fourth World congress on Parks and Protected Areas - all of which have signalled the urgency to complete the world's networks of protected areas. The world Commission on environment and Development has recommended that at least 12% of the planet be set aside in protected areas.

It is understood that nothing in this Statement shall in any way prejudice Aboriginal or treaty rights, the land claims process or self-government negotiations.

Premises

On the occasion of Canada's 125th anniversary, the Canadian Council of Ministers of the Environment, the Canadian Parks Ministers' Council, and the Wildlife Ministers' Council of Canada have come together to recognize that:

- Canada's natural heritage - its wildlands, waters and wildlife - unites and defines us all as Canadians

- Canada has a special global responsibility to protect its natural heritage given that:

  - Canada is steward of almost 20% of the planet's wilderness (excluding Antarctica), 20% of its fresh water, and 24% of its remaining wetlands
  - Canada is one of the few nations that still has an opportunity to represent its natural regions and features, and to conserve its critical wildlife habitat

- Protected areas have scientific, educational, inspirational and recreational values for

humankind and contribute to sustainable development

- Protected areas are essential to Canada's environmental health, biological diversity, and ecological processes
- The ecological health of protected areas is affected by the quality of the surrounding environment
- The opportunities to protect Canada's natural regions and wildlife habitat are quickly being foreclosed
- Canada's natural heritage should be safeguarded through a variety of protected areas, including national and provincial parks, ecological reserves, wildlife management areas and migratory bird sanctuaries
- Protected areas must be complemented by sound public and private stewardship of all of Canada's lands
- Aboriginal peoples have a significant and unique role in the protection of Canada's natural heritage
- The protection of Canada's natural heritage cannot be achieved by any one government or agency
- Canadians want to be involved in decisions affecting protected areas

Commitments

And therefore, in the interest of present and future generations of Canadians, council members will make every effort to:

- **Complete Canada's networks of protected areas representative of Canada's land-based natural regions by the year 2000 and accelerate the protection of areas representative of Canada's marine natural regions**
- **Accelerate the identification and protection of Canada's critical wildlife habitat**
- **Adopt frameworks, strategies, and time-frames for the completion of the protected areas networks**
- **Continue to cooperate in the protection of ecosystems, landscapes and wildlife habitat**

- **Ensure that protected areas are integral components of all sustainable development strategies**

The Honourable Pauline Browes
Minister of State (Environment)
Government of Canada
Canadian Council of Ministers of the Environment

The Honourable Harry J. Enns
Minister of Natural Resources
Government of Manitoba
Canadian Parks Ministers' Council

The Honourable Titus Allooloo
Minister of Renewable Resources and Municipal and Community Affairs
Government of the Northwest Territories
Wildlife Ministers' Council of Canada

Signed in Aylmer, Quebec, November 25, 1992

Appendix 6

Canadian Wilderness Charter

APPENDIX 6

CANADIAN WILDERNESS CHARTER

1. WHEREAS *humankind is but one of millions of species sharing the planet Earth and whereas the future of the Earth is severely threatened by the activities of this single species,* **2.** WHEREAS *our planet has already lost much of its former wilderness character, thereby endangering many species and ecosystems,* **3.** WHEREAS *Canadians still have the opportunity to complete a network of protected areas representing the biological diversity of our country,* **4.** WHEREAS *Canada's remaining wild places, be they land or water, merit protection for their inherent value,* **5.** WHEREAS *the protection of wilderness also meets an intrinsic human need for spiritual rekindling and artistic inspiration,* **6.** WHEREAS *Canada's once vast wilderness has deeply shaped the national identity and continues to profoundly influence how we view ourselves as Canadians,* **7.** WHEREAS *Canada's aboriginal peoples hold deep and direct ties to wilderness areas throughout Canada and seek to maintain options for traditional wilderness use,* **8.** WHEREAS *protected areas can serve a variety of purposes including:* **a)** *preserving a genetic reservoir of wild plants and animals for future use and appreciation by citizens of Canada and the world,*
b) *producing economic benefits from environmentally sensitive tourism,*
c) *offering opportunities for research and environmental education,*
9. WHEREAS *the opportunity to complete a national network of protected areas must be grasped and acted upon during the next ten years, or be lost,*

WE AGREE AND URGE:

1. THAT *governments, industries, environmental groups and individual Canadians commit themselves to a national effort to establish at least one representative protected area in each of the natural regions of Canada by the year 2000,* **2.** THAT *the total area thereby protected comprise at least 12% of the lands and waters of Canada as recommended in the world Commission on Environment and Development's report, Our Common Future,* **3.** THAT *public and private agencies at international, national, provincial, territorial and local levels rigorously monitor progress toward meeting these goals in Canada and ensure that they are fully achieved, and* **4.** THAT *federal, provincial and territorial government conservation agencies on behalf of all Canadians develop action plans by 1990 for achieving these goals by the year 2000.*

As of December 1993, the *Canadian Wilderness Charter* had been signed by more than 250 non-governmental organizations representing the environmental movement, organized religion, business and commerce, recreation and tourism, and naturalists.

Appendix 7

A Methodology for Achieving Representation of Canada's Natural Regions

APPENDIX 7

A METHODOLOGY FOR ACHIEVING REPRESENTATION OF CANADA'S NATURAL REGIONS

Protection of a representative sample of each of Canada's natural regions will contribute to the conservation of Canada's biological diversity. The concept of preserving representative samples within a protected areas network is central to the **Tri-Council Statement of Commitment** and the **Canadian Wilderness Charter**.

The notion of representation is grounded in the science of conservation biology which looks at ecological requirements for ongoing health of ecosystems and their constituent parts. Identifying and protecting representative features is a science-based exercise which focuses on the "enduring features of the landscape, relatively stable land and sea[-]forms and accompanying plant and animal communities". The idea is "not so much to preserve characteristic types of communities [as museum pieces], so much as to maintain the full spectrum of community variation along environmental gradients".

If a network of protected areas fails to represent all habitats, species, or other natural features, it is not fully representative. To assess whether or not a natural region is adequately represented, a methodology known as gap analysis is used. This technique assumes that representation of habitats is defined by soils, parent materials, topography, and other physical factors will serve to represent associated biotic features.

Research and recommendations on gap analysis and representation have been undertaken by the Canadian Council on Ecological Areas (CCEA).[10] Organizations such as the World Wildlife Fund are working to establish standards for science-based gap analysis. Currently, jurisdictions across Canada have differing methods for assessing the degree of representation.

The gap analysis process involves the mapping of land-forms, plant and animal communities, landscape features (and in some cases, cultural and recreational features) to assess the current degree of representation. The process looks at options for including sufficient (representative) examples of a region's essential natural populations and processes in a configuration that ensures the long-term integrity of those features and phenomena. The CCEA defines integrity as the "capability of a protected area to support and maintain assemblages of organisms (communities) that have a composition, form and functional organization comparable to that of similar ecosystem types of the regions."

---

[10] See *Framework for Developing a Nation-Wide System of Ecological Areas: Part 1* (CCEA, 1992).

Both representation criteria and gap analysis methodology are being refined on an ongoing basis through the cooperation of the different agencies and organizations participating in the nation-wide protected areas initiatives.

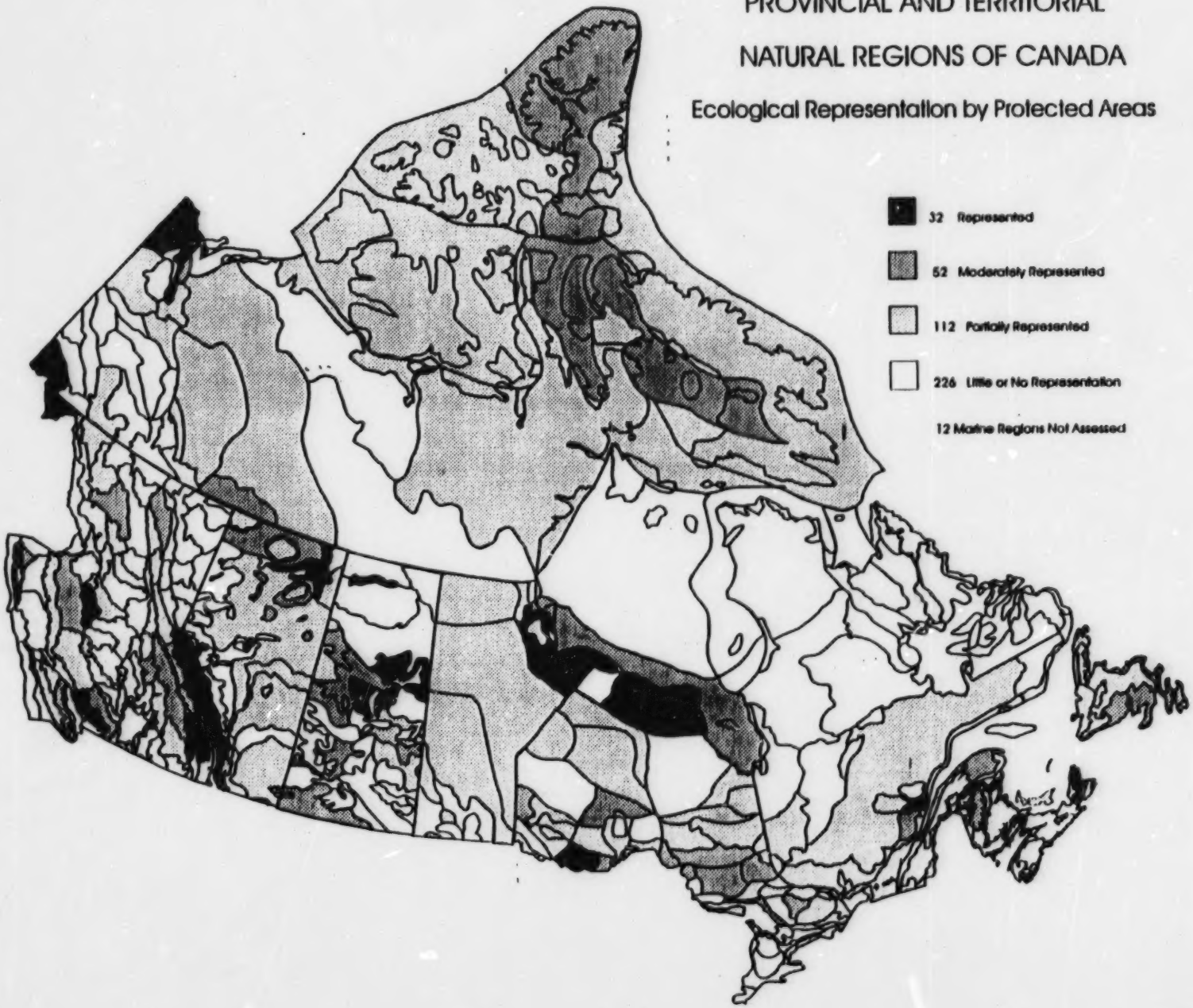
APPENDIX 8

CANADA'S NATURAL REGIONS[11]

[11] The following map has been supplied by the World Wildlife Fund. It illustrates the eco-region units currently adopted by each provincial/territorial government for purposes of protected areas network planning.

PROVINCIAL AND TERRITORIAL NATURAL REGIONS OF CANADA

Ecological Representation by Protected Areas



Appendix 9

World Conservation Union (IUCN) Protected Area Categories of Protected Areas

APPENDIX 9

WORLD CONSERVATION UNION (IUCN) PROTECTED AREA CATEGORIES OF PROTECTED AREAS[12]

Through its Commission on National Parks and Protected Areas (CNPPA), the IUCN has given international guidance on the categorization of protected areas for nearly a quarter of a century.

The IUCN definition of a protected area:

> An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means.

I. Strict Nature Reserves/Wilderness Areas

A Strict Nature Reserve is an area of land and/or sea possessing some outstanding or representative ecosystems, geological, or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.

A Wilderness Area is a large area of unmodified or slightly modified land, and/or sea, retaining its natural character and influence, without permanent or significant habitation, which is protected and managed so as to preserve its condition.

II. National Parks

A National Park is a natural area of land and/or sea, designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations, (b) exclude exploitation or (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally compatible.

---

[12] Excerpted from the *Guidelines for Protected Areas Management Categories*, endorsed by the 19th General Assembly of the IUCN -- World Conservation Union, Buenos Aires, Argentina, January 1994.

III. Natural Monuments

A Natural Monument is an area containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

IV. Habitat/Species Management Areas

A Habitat/Species Management Area is an area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species.

V. Protected Landscapes/Seascapes

A Protected Landscape/Seascape is an area of land, with coast and sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area.

VI. Managed Resource Protected Area

A Managed Resource Protected Area is an area containing predominantly (at least two-thirds) unmodified natural systems, managed to ensure long-term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.

In the case of categories I, II, III, and IV, one of the main management objectives is "to eliminate and thereafter, prevent exploitation or occupation inimical to the purpose of designation". Management of category V calls for the elimination and thereafter, the prevention of "land uses and activities which are inappropriate in scale and/or character". While category VI areas are to be managed for the protection and maintenance of biological diversity in the long term, they are also to be managed for the promotion of sound management practices for sustainable production purposes and contribution to regional and national development.

Appendix 10

Generic Land-Use Planning and Decison-Making Model

APPENDIX 10

GENERIC LAND-USE PLANNING AND DECISION-MAKING MODEL

Part A: An Eleven-Step Decision-Making Model

1. Define the required decision and the area to which it applies

- Define precisely the geographic area under consideration and the required decision.
- Describe the effect of the decision on the land's surface and subsurface.

2. Gather information to make the best possible decision

- Decide on the range of information needed, including where and how it can retrieved.
- Identify any critical information gaps.

3. Identify all the interests, rights, parties and stakeholders

- Establish criteria for what is a "legitimate" interest.
- Decide who and what are affected and ensure that they have access to and can participate in the process.
- Ensure that each participant's interests are clearly articulated and understood by the other participants.

4. Identify the issues

- Break the problem down into component issues based on the rights/interests of participants and the information gathered.

5. Select an appropriate decision-making process

- The range of processes include interest-based negotiations that focus on consensus-building, to consultation, to a simple bureaucratic or political decision.
- Identify which parts of the process are advisory and where the ultimate

decision-making authority lies.

- Identify the roles of the respective parties, including responsibilities and expectations.
- Ensure that all interested parties have a full understanding of the process.
- Establish the appropriate time-lines for reaching a decision.
- Identify the dispute resolution mechanisms

6. Gather additional data and conduct data analysis

- Where possible gather the strategic and critical data needed to fill the gaps for the selected process.
- Analyze all information.

7. Consider the options for issue resolution

- Identify the range of possible solutions and outcomes.
- Evaluate the possible outcomes in terms of environmental, social and economic impacts.

8. Make recommendations to resolve issues that enter into the decision

- Choose recommendations based on the options analysis, explicitly considering the principles in terms of environmental, social and economic impacts.
- Clarify to the decision-makers if the recommendations are to be considered as a package or if they can be implemented selectively.

9. Seek broader input on options/recommendations from the general public and the constituency groups represented in the process

10. Make a decision

- Communicate the decision, including the reasoning behind it, to all interested parties.

11. Implement the decision, monitor progress, and review the result following implementation

Part B: Necessary Characteristics

At the heart of interest-based decision-making is the goal of reaching consensus on a package of land use recommendations that is generally acceptable to all interests affected by the decision. Any process designed to achieve this must be open, fair, reasoned and effective. The following attributes are considered necessary for such a process:

1. Open

- All interests affected by the outcome must have an opportunity to participate on a voluntary basis;
- internally, process participants must be open to listening to diverse points of view and must be respectful of others interests;
- negotiations/discussions must proceed on a direct, face-to-face basis;
- the relation to those ultimately responsible for making and implementing the decision must be clear;
- decision-making alternatives, should a consensus process fail, must be identified; and
- all participants must have full and equal access to all information.

2. Fair

- To the extent that it is practical, the process should be designed by the participants to meet the needs of the issue being addressed;
- a comprehensive range of economic, environmental and social interests and values must be addressed;
- the process should be administered neutrally, including neutral assistance (e.g. independent facilitation) where necessary;
- to promote fairness, consideration should be given to providing training in negotiating skills/consensus-building and to ensuring that all participants have the necessary resources to be directly involved in a meaningful way; and
- process sponsors must be prepared to entertain compensation or mitigation measures when they are necessary to achieve fair treatment of affected interests, and to reach agreement.

3. Reasoned

- Adequate information must be provided to all interests, so that informed decisions can be made; and
- there must be reasonable assessment of information and a reasoned method of comparing different values.